

TRANSIT AND RAIL SECURITY

(110-13)

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

AND THE

SUBCOMMITTEE ON
RAILROADS, PIPELINES, AND HAZARDOUS
MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
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U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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March 7, 2007

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TO: Members of the Subcommittee on Highways and Transit
Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee Staff

SUBJECT: Hearing on Transit and Rail Security

PURPOSE OF HEARING

The Subcommittee on Highways and Transit and the Subcommittee on Railroads, Pipelines, and Hazardous Materials are scheduled to meet on Wednesday, March 7, 2007, at 10:00 a.m. to examine current issues in transit and rail security, including the roles and responsibilities of the Department of Homeland Security, the Federal Transit Administration, and the Federal Railroad Administration; the state of preparedness in the transit and rail industry; and federal programs and activities that help meet the security needs and funding priorities for mitigation of security threats against the Nation's transit and rail systems.

BACKGROUND

Throughout the world, transit and rail systems have long been targets of terrorist attacks, causing thousands of deaths and injuries. Recent events make it clear that the threats continue. On March 11, 2004, a coordinated terrorist attack against the commuter train system of Madrid, Spain, killed 191 people and wounded more than 2,000 others. The attacks consisted of a series of ten explosions that occurred onboard four commuter trains. On July 7, 2005, four bombs exploded on the London transit system – three in the Underground and one on a city bus. The explosions killed 52 people and resulted in over 700 injuries. It was the deadliest bombing in London since World War II. Two weeks later, on July 21, 2005, another group of terrorists unsuccessfully attempted to attack London's mass transit system. On July 11, 2006, a series of seven bomb blasts that took place over a period of 11 minutes on the Suburban Railway in Mumbai, capital city of the Indian state of Maharashtra and India's financial capital, killed 209 people and injured over 700 others. On February 19, 2007, at least 66 persons were killed and approximately 13 were injured when twin explosions of improvised

explosive devices caused two cars of the Pakistan bound Attari Express to catch fire near Panipath in India.

Transit and rail systems are popular targets of terrorist attacks worldwide – from 1991 to 2001, 42 percent of all terrorist incidents were carried out on rail systems or buses. Certain characteristics of domestic and foreign passenger rail systems make them inherently vulnerable to terrorist attacks and therefore difficult to secure, according to the Government Accountability Office (GAO). By design, rail systems are open, have multiple access points, are hubs serving multiple carriers, and in some cases, have no barriers so that they can move a large number of people or freight quickly. In contrast, the U.S. commercial aviation system is housed in closed and controlled locations with few entry points. Transit and rail systems have open access with stops and transfer points and are thus difficult to protect. In addition, high volume (passengers and freight), expensive infrastructure, economic importance, and location also make them attractive targets for terrorists because of the potential for mass casualties, economic damage, and disruption.

According to the GAO, some of these same characteristics make passenger rail systems difficult to secure. For example, the numbers of riders that pass through a subway system—especially during peak hours—may make the sustained use of some security measures, such as metal detectors, difficult because they could result in long lines that disrupt scheduled service. In addition, multiple access points along extended routes could make the cost of securing each location prohibitive. Balancing the potential economic impact of security enhancements with the benefits of such measures is a difficult challenge.

TRANSIT AND RAIL SECURITY NEEDS

In the United States, there are 6,000 public transportation agencies that provide 9.5 billion transit trips annually. The over-the-road bus industry, which provides intercity bus service and charter service, transports 774 million passengers annually. Amtrak serves approximately 25 million passengers annually. Every day, more than 14 million people use public transportation to get to and from work and school, go shopping, visit medical facilities, or go out for entertainment. By comparison, the U.S. aviation industry serves 1.8 million passengers daily. In one month, public transit moves more passengers than U.S. airlines transport in a year.

Commuter railroads and Amtrak often interact with each other and the freight railroads. On the Northeast Corridor, for example, the busiest corridor in the nation, seven commuter railroads, Amtrak, and several freight railroads interconnect, and many of them operate on the same rail lines. Seventy percent of the miles traveled by Amtrak trains alone are on tracks owned by the freight railroads.

There are 562 common carrier freight railroads operating in the U.S., which are divided among three classes based on annual revenues. Class I railroads are the largest railroads. They account for 68 percent of the industry's mileage, 89 percent of its workforce, and 93 percent of its freight revenue. Some 40 percent of all intercity freight, measured in ton-miles, moves by rail, including 64 percent of the coal used by electric utilities to produce power. Over 1.7 million shipments of hazardous materials are shipped by rail annually, including materials that could be used in attacking the public such as toxic inhalation hazardous materials, flammable liquids and gases, explosives, radiological materials, and poisonous materials.

Maintaining safe and secure transit, railroad, and bus systems is essential. However, there has been very little federal investment in improving the security of these systems. Last year, the Federal Government invested \$4.7 billion in aviation security improvements, while spending only \$136 million on transit and rail security, even though at least five times as many people take trains as planes every day.

In 2004, the American Public Transportation Association (APTA) conducted a survey of U.S. transit system security needs and funding priorities. From a sample of 120 transit agencies that participated in the survey, APTA estimated that total security needs industry-wide are \$6 billion – \$5.2 billion for security-related capital investment and \$800 million for security-related personnel and operating expenses. The highest priority capital investments the survey responders listed were radio communications systems, security cameras on-board vehicles and in stations, controlled access to facilities, and automated vehicle locator systems. The highest priority operating needs listed were funding for current and additional security personnel, training and drills for security personnel and law enforcement officials, and security training for other system employees.

The American Bus Association (ABA), which represents 3,800 carriers in the over-the-road bus industry, has testified in front of the Committee on the security needs of its member companies. ABA cited security training for personnel, drivers, dispatchers, and mechanics as the highest priority. Additional equipment for operators is also needed to enhance security, including cell phones and other communications systems between drivers and their "home base" and emergency first responders; driver shields; cameras for bus facilities, staging areas and garages; and upgrades to bus passenger terminals in major cities. Information systems that provide companies real-time information on the status and location of buses will also enhance security.

Amtrak's Inspector General reports that the railroad needs an additional \$70 million annually for security upgrades and \$35 million annually for fire and life-safety improvements to tunnels on the Northeast Corridor in New York, Maryland, and Washington, D.C.

DHS TRANSIT AND RAIL SECURITY GRANTS

DHS' Office of Grants and Training provides funding, training, and technical assistance to States and local governments to help prevent, deter, and respond to terrorist acts. This office manages security grant programs for transit and rail systems, over-the-road bus carriers, ports, and other non-aviation transportation systems and facilities. Since Fiscal Year 2003, DHS has managed a transit security grants program. The grants total \$387.5 million over four years: \$67.8 million in FY 2003; \$49.7 million in FY 2004; \$134 million in FY 2005; and \$136 million in FY 2006 (\$9 million of which was reserved for Amtrak). Since Fiscal Year 2003, DHS has also administered an Intercity Bus Security Grants Program. Grants total \$48.8 million over four years: \$19.8 million in FY 2003; \$9.9 million in FY 2004; \$9.6 million in FY 2005; and \$9.5 million in FY 2006. DHS has announced the availability of \$11.6 million in grant funds for FY 2007. The Department of Homeland Security Appropriations Act (Public Law 109-295) provided \$175 million for such grants in FY 2007.

The basis on which funds are allocated and the procedures for making funds available to transit agencies have changed significantly over the years the program has been in existence. For example, in FY 2003, transit security grants were made directly to transit agencies, but in FY 2004, the funds had to be passed through a State Administrative Agency. In FY 2005, the transit security grant funds were made available to regional transit security working groups, which have to reach a local consensus on funding allocations within an urban area before applying for security grant funds. The transit industry has been frustrated by changing grant application procedures, the relatively small

amount of security funding, and the long wait to receive funds that are appropriated (FY 2006 grants were not made until September 2006). Amtrak has raised similar concerns. In the FY 2007 Department of Homeland Security Appropriations Act, Congress included a timeline for distribution of FY 2007 grant funds. Despite clear direction, the Department released the FY 2007 grant guidance seven weeks late. The grant application deadline is March 6, 2007. In the FY 2008 DHS Budget request, another new office has been established to handle infrastructure security, including transit and rail, the National Protection and Programs Directorate.

DEPARTMENT OF HOMELAND SECURITY INITIATIVES

The Department of Homeland Security (DHS) houses the Transportation Security Administration (TSA), which was vested in section 114(d) of the Aviation and Transportation Security Act (P.L. 107-71) with lead responsibility “for security in all modes of transportation, including ... security responsibilities over other modes of transportation that are exercised by the Department of Transportation.”

On December 17, 2003, the President issued Homeland Security Presidential Directive-7, which required the Department of Homeland Security to develop a National Infrastructure Protection Plan (NIPP) covering 17 critical infrastructures and key resources. The plan was supposed to be completed by December 2004. It was not completed until the summer of 2006. The Department was supposed to complete a Transportation Sector Specific Plan as part of the NIPP. This plan was also due in December 2004. It was never completed.

In 2004, Congress mandated the development of a National Strategy for Transportation Security in the Intelligence Reform and Terrorism Prevention Act (Public Law 108-458), more commonly known as the 9/11 Act. The Act required the Secretary of Homeland Security to develop, prepare, implement, and update a National Strategy for Transportation Security and transportation modal security plans. The Secretary was required to work jointly with the Secretary of Transportation in developing, revising, and updating the documents.

The strategy was to include: (1) an identification and evaluation of the transportation assets of the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption; (2) the development of risk-based priorities across all transportation modes and realistic deadlines for addressing security needs associated with transportation assets; (3) the most appropriate, practical, and cost-effective means of defending those assets against threats to their security; (4) a forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, and local authorities and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan; (5) a comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States; and (6) a prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets.

The strategy and the transportation modal security plans were due by April 1, 2005. TSA did not finalize the strategy until September 2005. According to the 9/11 Discourse Project, it failed to meet many of the requirements that Congress set forth in the law and gave TSA a C- for its efforts. Moreover, TSA failed to complete most of the modal security plans, including the ones for transit

and rail security, as required in the 9/11 Act. Under the Act, the Department was also supposed to provide updates to the strategy and model security plans by April 1, 2006. TSA has not yet provided those updates.

On December 5, 2006, the President issued Executive Order (EO) 13416 on strengthening surface transportation security, recognizing the security of the nation's surface transportation systems as vital to the economy and security of the nation. In the EO, the President stated that Federal, State, and local governments and the private sector share responsibility for surface transportation security. The EO calls for implementation of a comprehensive, coordinated, and efficient security program. It also states that the Secretary of Homeland Security is the principal federal official responsible for infrastructure protection for surface transportation.

The Department of Transportation (DOT) also has a major role in securing our nation's transit and rail systems. The overall Department of Transportation, the Federal Transit Administration, the Federal Railroad Administration, and the Pipeline and Hazardous Materials Safety Administration have all signed Memorandums of Understanding with the DHS to clarify their roles and responsibilities relating to security.

THE FEDERAL TRANSIT ADMINISTRATION

The Federal Transit Administration (FTA) is a federal grants-in-aid agency. FTA, however, has explicit statutory authority to oversee and regulate safety through making grants conditional upon meeting certain requirements. The broadest authority for security oversight of federally-funded transit properties and assets resides in 49 U.S.C. 5329, which authorizes the Secretary of Transportation to conduct investigations into safety hazards and security risks associated with transit equipment, facilities and operations and to withhold financial assistance until a corrective action plan is approved and carried out. In addition, the State Safety Oversight program under 49 U.S.C. 5330, requires States to establish and conduct a safety program plan for each fixed guideway system operating within its borders and to establish a State authority to monitor safety performance, investigate accidents, and require corrective action. Each system safety plan includes a security plan component and emergency response plans. (This requirement excludes commuter rail operations, which are under the safety oversight of the Federal Railroad Administration). Federal transit funds are required to be expended on security improvements, as well. Under 49 USC 5307(d)(1)(J), transit systems in urbanized areas (areas of more than 50,000 in population) are required to expend at least one percent of their Federal formula grant funds each fiscal year for transit security projects, including camera surveillance, communications, improved lighting, or any project that increases the security and safety of a public transportation system.

SAFETEA-LU (P.L. 109-59) included three new explicit transit security provisions. Section 3004(b) amended 49 USC 5302(a)(1)(J) to make security and crime prevention expenses eligible for federal capital transit funding, including operating costs for transit employee security training and drills. Section 3028(c) directed DOT and DHS to issue a joint final regulation to establish the characteristics of and requirements for public transportation security grants. The legislative deadline for the issuance of the final rule was 180 days after enactment of SAFETEA-LU, or February 10, 2006. Section 3028(b) directed DOT and DHS to execute an Annex to the Memorandum of Understanding (MOU) between DOT and DHS that defines and clarifies the respective roles and responsibilities of the Departments relating to public transportation security. The Annex was directed to be issued within 45 days of enactment; the Annex was issued on September 8, 2005, ahead of the deadline.

Under the MOU, the FTA and DHS agreed to coordinate their programs and services (including risk assessments, grants, training, exercises, and technical assistance) in order to better assist transit agencies in prioritizing and addressing their security-related needs. In addition, the agencies agreed to establish and implement an annual plan that will coordinate their transit security grant programs, consistent with the National Strategy for Transportation Security. The FTA and DHS also agreed to consult with one another in establishing security standards for transit systems, emergency regulations, and security directives as they are being developed, and to solicit input from transit stakeholders, as appropriate, throughout the process.

THE FEDERAL RAILROAD ADMINISTRATION

The Federal Railroad Administration (FRA) has authority over every area of railroad safety (including security). The FRA administers the Federal railroad safety laws, issues and enforces a substantial body of safety regulations, investigates railroad accidents and incidents, and has authority to address emergency situations involving hazards of death or injury in the railroad industry. The FRA also enforces the Federal hazardous materials laws and regulations issued by DOT's Pipeline and Hazardous Materials Safety Administration. [Note: The Surface Transportation Board, which deals with railroad economic matters, has statutory authority to take summary emergency action to deal with any rail transport emergency that threatens rail service, including according preferences and priority to military traffic, such as the transportation of war material, at the President's request.]

On September 28, 2006, the FRA and TSA signed a Memorandum of Understanding (MOU), which clarifies the agencies' roles and responsibilities. Under the MOU, the parties agreed to coordinate, to the maximum extent practicable, their programs and activities in order to improve passenger and freight railroad security in the United States while minimizing disruptions to railroad operations to the extent practicable. The FRA and TSA agreed to hold regular coordination meetings; coordinate training for their field inspectors; coordinate inspections and enforcement actions to leverage knowledge and expertise, avoid duplication of effort, and minimize demands on stakeholders; and to discuss emerging security threats based on intelligence indicators and other matters as warranted.

The MOU further provides that TSA inspectors hold lead authority and responsibility in conducting security inspections and reviews to ensure compliance with TSA security directives, identify security gaps, develop and share security best practices, and monitor the state of awareness and readiness throughout the rail mode. TSA inspectors are not supposed to initiate or conduct safety inspections. FRA inspectors have the authority and responsibility in conducting safety inspections of railroad passenger and freight operations, ensuring safety compliance, and providing safety guidance and information to stakeholders. FRA inspectors also conduct hazardous materials security inspections to ensure compliance with DOT security regulations and inspections as requested by TSA. FRA inspectors are supposed to refer significant security problems they observe to TSA, and TSA is supposed to inform FRA of any significant rail safety issues observed. TSA has 100 rail security inspectors. FRA has 421 rail safety inspectors and utilizes an additional 160 State inspectors to carryout the agency's safety mission.

With respect to vulnerability assessments and security reviews, TSA must coordinate with FRA on observations or recommended measures derived from the results of criticality and vulnerability assessments to ensure they do not conflict with or adversely affect current or planned safety requirements. In addition, TSA must consult with FRA in the development of procedures that impact the facilities or operations of rail passenger and freight carriers or rail shippers.

In emergencies, the Secretary of Homeland Security is the principal Federal official for domestic incident management. However, DOT is responsible for the emergency management of the transportation system, coordination of alternative transportation services, the restoration and recovery of transportation infrastructure, and other functions. FRA has the lead role in investigating rail accidents and for reporting and coordinating accident response until it is determined that the accident may have been deliberately caused, at which time TSA gets involved.

When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, current law requires the Secretary of Homeland Security to consult with DOT. The MOU further provides that the DOT will consult with DHS prior to disseminating safety requirements (including regulations and orders) and voluntary standards and guidelines that impact security to the public. The FRA and TSA agreed to “seek early and frequent coordination in the development of regulations, other requirements – such as orders and directives (including security directives) and guidelines and standards affecting rail security. In most cases, these will be TSA actions, with FRA having the opportunity to provide input, but DOT and FRA will have the same obligation to consult with TSA on any such proposals and actions relevant to rail security, including safety measures with security implications.”

HAZARDOUS MATERIALS TRANSPORTATION

The Pipeline and Hazardous Materials Safety Administration (PHMSA) governs hazardous materials safety in all modes of transportation. With respect to rail transportation, the FRA is responsible for enforcing PHMSA’s Hazardous Materials Regulations (HMR). HMRs promulgated by PHMSA under the mandate in section 49 U.S.C. 5103(b) govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate. Consistent with this security authority, in March 2003, PHMSA adopted new transportation security requirements for shippers and transporters of certain classes and quantities of hazardous materials and new security training requirements for hazardous materials employees. The security regulations require shippers and carriers who offer for transportation or transport certain materials (and quantities) to develop and implement security plans and to train their employees to recognize and respond to possible security threats. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. It must also address personnel security, unauthorized access, and en route security. To address personnel security, the plan must include measures to confirm information provided by job applicants for positions involving access to and handling of the hazardous materials covered by the plan. To address unauthorized access, the plan must include measures to address the risk of unauthorized persons gaining access to materials or transport conveyances being prepared for transportation. To address en route security, the plan must include measures to address security risks during transportation, including the security of shipments stored temporarily en route to their destinations. Shippers and carriers in all modes were required to have these security plans in place by September 25, 2003.

With respect to delays in transportation, rail carriers are currently required to expedite the movement of hazardous materials shipments. Each shipment of hazardous materials must be forwarded “promptly and within 48 hours (Saturdays, Sundays, and holidays excluded)” after acceptance of the shipment by the rail carrier. If only biweekly or weekly service is performed, the carrier must forward a shipment of hazardous materials in the first available train. Additionally, carriers are prohibited from holding, subject to forwarding orders, tank cars loaded with Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) materials. The purpose of § 174.14 is to help ensure the prompt delivery of hazardous materials shipments and to minimize

the time materials spend in transportation, thus minimizing the exposure of hazmat shipments to accidents, derailments, unintended releases, or tampering.

With respect to routing, the HMRs do not include specific routing requirements for rail hazmat shipments, e.g., to route shipments around or away from particular geographic areas. But in promulgating its March 2003 security regulations, PHMSA specifically required rail carriers to address en route security; however, PHMSA deliberately decided to leave the specifics of hazardous materials rail routing decisions, and other en route security matters covered by transportation security plans, to the judgment of rail carriers. According to PHMSA, these security regulations therefore preempt, among other things, any state, local, or tribal laws and regulations prescribing or restricting the routing of rail hazardous materials shipments.

On December 21, 2006, PHMSA and TSA issued Notices of Proposed Rulemaking to expand their regulations on hazardous materials transportation security. PHMSA proposed requiring rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. PHMSA also proposed clarifications of the current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for hazardous materials shipments. The TSA rule proposes to require regulated parties to allow TSA and DHS officials to enter, inspect, and test property, facilities, and records relevant to rail security. TSA further proposes that freight rail carriers and certain facilities handling hazardous materials be equipped to report location and shipping information to TSA upon request.

The railroads have also taken steps to strengthen the safety and security of hazardous materials transportation. For example, the rail industry developed on August 26, 2005, a detailed protocol on recommended railroad operating practices for the transportation of hazardous materials. The Circular designates trains as “key trains” containing five tank car loads or more of poison inhalation hazard materials (PIH); 20 or more car loads of a combination of PIH, flammable gas, Class 1.1 or 1.2 explosives, and environmentally sensitive chemicals; or one or more car loads of spent nuclear fuel or high level radioactive waste. The Circular designates operating speed and equipment restrictions for key trains; designates key routes for key trains; and sets standards for track inspection and wayside defect detectors, yard operating practices for handling placarded tank cars, storage, loading, unloading and handling of loaded tank cars; assists communities with emergency response training and information; and provides procedures for shipper notification and the handling of time-sensitive materials. According to PHMSA, the recommended practices have been implemented by all of the Class I rail carriers and the shortline railroads.

In addition, the railroads provide local emergency officials with information on the types of hazardous materials transported through their communities, upon request. Railroad companies are also active participants in the American Chemistry Council’s TRANSCAER (Transportation and Community Awareness and Emergency Response), a nationwide effort to assist communities with emergency response plans, as well as CHEMTREC® (Chemical Transportation Emergency Center), the ACC’s 24-hour emergency response operation.

LEGISLATIVE ACTIONS

There are a number of bills pending Congressional action to address transit and rail security. S. 4, the 9/11 Commission Recommendations bill, includes a bill to strengthen transit and rail

security. On the House side, on March 1, 2007, Chairman Oberstar, Congressman DeFazio and Congresswoman Brown introduced H.R. 1269. Committee on Homeland Security's Transportation Security and Infrastructure Protection Subcommittee has marked-up a rail and public transportation Security bill.

In the 109th Congress, the Transportation and Infrastructure Committee reported H.R. 5808, legislation to enhance public transportation security, on September 15, 2006. No legislation was considered on rail security.

WITNESSES

PANEL I

Mr. Norman J. Rabkin
Homeland Security and Justice
U.S. Government Accountability Office
Managing Director
Washington, D.C.

Mr. William Millar
American Public Transit Association
President
Washington, DC

Mr. Peter Pantuso
American Bus Association
President and Chief Executive Officer
Washington, DC

Mr. Fred Weiderhold
Amtrak
Inspector General
Washington, DC

Michael Siano
Amalgamated Transit Union
International Executive Vice President
Washington, DC

PANEL II

Mr. Ed Hamberger
Association of American Railroads
President and Chief Executive Officer
Washington, DC

Mr. John P. Tolman
Brotherhood of Locomotive Engineers and Trainmen
A Division of the Teamsters Rail Conference
Vice President and National Legislative Representative
Washington, DC

Mr. Marty Durbin
American Chemistry Council
Managing Director of Federal Affairs
Arlington, VA

JOINT HEARING ON TRANSIT AND RAIL SECURITY

Wednesday, March 7, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT JOINT WITH THE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS
MATERIALS,
Washington, DC.

The subcommittees met, pursuant to call, at 9:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Peter DeFazio [chairman of the Subcommittee on Highways and Transit] presiding.

Mr. DEFazio. The Subcommittee will come to order. This is a hearing on transit and rail security.

I have some brief opening remarks. I want to apologize in advance since we had to move the hearing up, and I appreciate people accommodating that because of the joint address. I have something scheduled at 9:30 which I have to do, which is all the way over in Cannon. So I will be stepping out for a bit but will get back as quickly as I can.

I have the honor of serving on both the Homeland Security Committee and this Committee, so this hearing is a bit repetitive for me, but this is a critical issue. We have to do better by transit and rail security in this Country. We have put a lot of attention and a lot of resources into aviation, and yet aviation is still a work in progress, but we have not paid adequate attention to transit and rail. Despite the fact that we know that perhaps aviation is the preferred target, we know that transit and rail are a target and have been a target, successfully attacked in other countries, and we need to do better to attempt to deter attacks here in the United States.

Fourteen million people use public transit every day, nine and a half billion trips annually. Although we have estimated there is about \$6 billion in needs, we have invested thus far on the Federal level only \$136 million, which is obviously much less of an effort than we have made in the area of aviation.

I am pleased to have our panel here today, pleased to have members here at this early hour and, with that, I would recognize the Ranking Member, Mr. Duncan.

Mr. DUNCAN. Well, thank very much, Mr. Chairman, and thank you for calling this hearing.

Shortly after 9/11, the title of the Farm Bill in the House that year was changed to the Farm Security Act, and every department

and agency in the Federal Government was suddenly attaching the word, security, to almost all of their requests. The Wall Street Journal wrote an editorial around that time, and they said, "Any bill with the word, security, in it should get double the public scrutiny and maybe four times the normal weight, lest all kinds of bad legislation become law."

About a year after 9/11, as I was driving in here one morning, I heard on NPR News that the new Department of Homeland Security had—they gave some specific figure like 3,278 or some kind of figure—well over 3,000 ideas for security devices that people had submitted around that same time that 750 lobbyists had suddenly registered as new lobbyists in this industry that had popped up around homeland security.

I support homeland security grants including grants to improve security for transit and rail systems if the grants are used for activities that actually help protect the traveling public and if those activities are carried out in a cost effective manner.

I agree that we haven't exactly rushed to legislate in the area of transit and rail security. The Highways and Transit Subcommittee has held similar transit security hearings in the past in June of 2004 and March of 2006, and this Committee has previously reported out, the full Committee has previously reported out, authorizing legislation for transit and over the road bus security three times.

As we go down this road once again, I am concerned about whether we really have a handle on the costs of these programs. There should be an independent assessment of risk-based security needs. Not every transit system in the U.S. needs to receive a security grant. Not every activity that some agencies characterize as security will actually make riders safer.

I agree that we need to do a better job of protecting the transit and rail riding public, but to do that we need better security grants management than has been provided thus far by the Department of Homeland Security. The Department of Transportation, which has the in-depth knowledge of transportation programs policy and operations, should manage transportation security grants. It is really that simple.

Just to summarize, I can support a DOT-administered transit and rail security grant program that ensures that funds are allocated using a fair risk-based methodology with grant activities that actually improve security. But before supporting an effort, we need to take a closer look at the price tag and we need not to just automatically approve anything that someone attaches the word, security, to.

Thank you, Mr. Chairman.

Mr. DEFazio. With that, this is a joint hearing since it is transit and we also have the pleasure of being joined by the Subcommittee on Railroads, Pipelines and Hazardous Materials. With that, I recognize Chairwoman Brown for an opening statement.

Ms. BROWN. First of all, I want to thank Chairman DeFazio for joining me in holding this hearing on an issue that hasn't gotten the attention it needs and deserves.

This Sunday will mark the third anniversary of the train bombing in Madrid, and we have seen terrorist attacks in London and

India in each year since. Yet, the Bush Administration has done little to protect our Nation's freight rail and public transportation system and its millions of passengers. The anniversary of this terrible tragedy again raises a serious question as to whether we are prepared in this Country for a similar attack. Sadly, the answer is no, no. The Federal Government has focused most of its attention in enhancing security in the airline industry and has largely ignored the needs of public transit agencies and railroads. Yet, worldwide, more terrorist attacks have occurred on transit and rail systems since 9/11 than on airlines.

In 2006, we dedicated \$4.7 billion to the airline industry for security while 6,000 public transit agencies and one national passenger railroad, Amtrak, had to share a mere \$136 million total for security upgrades. Nothing was provided to the 532 freight railroads for security upgrades.

Fortunately, for the traveling public, the legislation that I have introduced with Chairman Oberstar and Chairman DeFazio will address the security challenges facing our Nation's transit and rail systems. Our bill requires comprehensive security plans, strengthened whistleblower protection for workers, mandates security training, improves communications and intelligence sharing, authorizes a high level of grant funding for Amtrak, the freight railroads and public transit providers, and provides funds for lifesaving improvements to the tunnels in New York, Boston and Washington, D.C. Most importantly, it helps make sure our communities, our first responders and our transit and rail workers are safe and secure, and it does all of this through a coordinated effort between the Department of Homeland Security and the Department of Transportation, the agent that has the expertise to deal with transportation safety issues.

We are way behind many other countries in protecting our transit and rail system, but with the leadership—let me repeat—the new leadership in the Congress, we have a plan that will protect millions of transit and rail passengers and the communities through which freight railroads operate from harm while keeping the trains running on time.

Once again, I want to thank the Chairman for holding this joint hearing, and I yield back the balance of time.

Mr. DEFAZIO. With that, I would recognize Congressman Shuster from Pennsylvania, the Ranking Member on the Railroads Subcommittee.

Mr. SHUSTER. Thank you, Mr. Chairman.

I want to thank all of our witnesses for being here today.

We do need to focus on rail and transit security, but I think it is important to also point out that the last six years, we have not had an attack, and we need to give great credit to our law enforcement and intelligence community for, I believe, that record. As we look at our transit system and rail system, it is an open system; highway system, open system. We are not going to be able to close it off, but we do need to focus and find ways to be sure that we are enhancing and improving that security. But the best way, as I said, is intelligence sharing, intelligence gathering and making sure that our law enforcement have the tools available to be able

to go out and find, arrest and take down these organizations that want to do harm to American citizens and our system.

The rail system in the United States is large, the largest in the world, 200,000 miles of track and over 220,000 employees. With the commuter rail system, we are carrying over a million passengers per day. As I said, this is an open system. We can't close it, but we again have to find ways to improve our security system.

The railroads in this Country, I think, have done a good job of starting off on their own. The Association of American Railroads created and funded its own security plan immediately after 9/11 and conducted risk analysis of the entire industry including train operations, communications and cyber security and hazmat transportation. The AAR created a DOD-certified 24/7 operations center working at the secret level to monitor and evaluate intelligence.

They also created a surface transportation information sharing and analysis center operating at a top secret level to handle infrastructure and cyber security threats. A railroad police officer sits on the FBI's National Joint Terrorism Taskforce. Rail analysts with top security clearance sit at DHS offices also. As I said, I think they have done a good job of the private sector moving forward, making sure they are trying to protect this critical infrastructure.

We in Congress have to join with them and do more, similar to what we have done in the aviation industry and make sure that we are a partner with industry so that commerce and our citizens are safe.

Again, I want to thank Mr. DeFazio and Chairwoman Brown for holding this joint hearing and again welcome all of our panelists. I yield back.

Mr. DEFazio. I thank the gentleman.

We want to move ahead as quickly as possible with the witnesses.

Ms. Matsui, do you have an opening statement, briefly?

Ms. MATSUI. Thank you, Chairman DeFazio and Chairman Brown for holding this very important joint hearing.

Transit and rail security is very important in my district. On the outskirts of my district is a Roseville rail yard which is the largest switching point of goods west of the Mississippi. Any spills or terrorist attacks could cause significant damage to business as well as loss of lives. Everyday trains arrive in the Roseville rail yard from California's busiest ports. Five percent of all cargo transported through Roseville has hazardous material and runs directly through my district. We really have a keen interest in securing this rail yard.

Additionally, in downtown Sacramento, our transit system is making a significant contribution to our city's downtown economic development. Part of the reason why our downtown is developing is because Sacramento has a growing and vibrant public transportation system. As many of us already know, transit costs a significant investment in our community and neighborhoods. We must protect these investments, and we must make sure that the men and women who drive our buses and work on our rail lines receive adequate emergency preparedness training. They are the eyes and ears of our communities.

I am really looking forward to hearing from today's witnesses, and I truly appreciate Chairman DeFazio and Chairman Brown for calling this very important hearing. Thank you.

Mr. DEFAZIO. Thank you. Thank you for being succinct.

Any others?

We have Mr. Mica, the full Committee Ranking Member here, who always has some words of wisdom. Mr. Mica?

Mr. MICA. Well, thank you. I did want to come this morning because I think this is an important hearing, and I think it also is going to set the tone for what we do in Congress in a very important area. We are talking about increasing the amount of funds we are going to spend in this area pretty dramatically. So what we do is important that it is effective.

First of all, I think transit systems and railroads are particularly vulnerable to attack because they have open access. We just heard our Ranking Member mention that we have an open society and we have areas where there are large concentrations of people that use a public transit system. In any open society, it is almost impossible to protect everyone for every instance and every potential threat. But the threat to transit and rail security systems is very real, although again it is almost impossible to protect us against every potential attack.

However, there are some things that we can do to assist transportation providers respond effectively to attacks and help our first responders. The most effective way to prevent terrorism is not by what we are going to discuss here today, but it is, as we have found, to penetrate the organization, the finance and communications of terrorist organizations. Most of what Congress has done has been to curtail, impede or limit law enforcement's and intelligence agencies' ability to obtain that information I just talked about or penetrate these organizations, and in fact that is probably our most effective use of dollars, going after those organizations and stopping the attack.

Thus far, I have not seen much evidence that security grants administered by the Department of Homeland Security are particularly effective. In fact, there have been some examples of serious mismanagement of some of the grants under DHS programs such as the Urban Area Security Initiative and the Homeland Security grant program.

Let me just cite a few of those examples. One was \$160,000 grant to Montgomery County, Maryland, to buy eight large screen plasma TVs. They probably should have waited. The price has gone down dramatically.

[Laughter.]

Mr. MICA. A \$3,000 grant to Converse, Texas, to buy a secure trailer to transport lawnmowers to the annual lawnmower drag race; a \$100,000 grant to the Washington, D.C. Department of Public Works to pay for sanitation workers to attend a Dale Carnegie management and public speaking session. Now these are some egregious violations, and we cannot allow security grants that we create to go for frivolous activities like these.

I believe that transit and rail security grants should be focused on activities that really can make a difference. First of all, better communications, systems that are interoperable—right now, we

have inoperable systems, but we need interoperable systems with our emergency responders—increased monitoring of rail and transit stations and other facilities, and basic security training for front line transit and rail workers.

With 170,000 employees in DHS with responsibility over some 20 agencies, I don't believe that DHS is the best place and doesn't particularly have the best expertise or track record in grants management or in transit and rail policy operations to effectively manage, again, what we are talking about here today. If we are going to have transit and rail security grants, I would urge both sides of the aisle to consider having those grants managed by the Department of Transportation.

The DHS transit and rail security program has averaged about \$135 million a year for the past couple of years, and I have seen proposed legislation that authorized \$1.5 billion a year for the same activities. It remains to be seen if this level of funding is justified. However, we need a risk-based estimate for transit and rail security needs that has been conducted in a disciplined manner and independently validated. Without it, we are flying blind because again we are an open society.

Any terrorist, in fact, even a lame-brained terrorist could with little imagination take down our tunnels, our critical infrastructure, our subways, attack our transit systems, regardless of any grants or measures that Congress will adopt. Remember that. They can do that, no matter what you are going to adopt here today.

We had a chance, I don't know. You didn't go on that one, did you, when we went to London a few months before the London attack and we saw what they put in place? They spent quite a bit of money, and they had one of the most sophisticated systems. Ms. Brown went. But all they could do—and they had the attack afterwards—all they could do when they had people who were determined to take down their transit system, was to obtain surveillance tapes. It did help them unravel the case. It is impossible to stop that type of action.

If you look at London and Madrid, London had suicide bombers intent on taking them down. Anything that you provide in these grants will not do that. It might help you find them after the fact. In Madrid, you had backpacks and cell phones, again, almost impossible to eliminate backpacks and cell phones for all your people that access transit.

So, again, we have to think how we are going to spend these dollars, that we spend them wisely. We put them in responsible hands and that they do the best in addressing potential risks.

Sorry to take so much time, but I came this morning because this is a very important topic, and the money we spend and the programs we devise need to be very sound. Thank you.

Ms. BROWN. Mr. Chairman, can I ask the Ranking Member a quick question, 30 seconds?

Mr. DEFAZIO. You know we are going to try and get done by 11:00, and we have two panels, but if the gentlelady has an urgent need.

Ms. BROWN. Yes, just quickly, first of all, I want you to know that as far as the grants going to the Department of Transportation, without objection.

Secondly, I was with you when we went to London, and I think it is very important. They were not able to stop the bombing, but one of the things is, as you said, they were able to identify within days who bombed the trains, and we don't have that capacity as we sit here and speak.

Mr. DEFAZIO. I thank the gentlelady for her comment.

Again, we are trying to get in two panels by 11:00.

I urge members to submit opening statements for the record, but Ms. Napolitano wishes to be recognized.

Ms. NAPOLITANO. Thank you, Mr. Chair.

I associate myself with the remarks of my colleagues. I, too, am very concerned about the level of security along the railroads since the Alameda Corridor East in Los Angeles, the whole quarter runs through my district. It has more than 150 trains through there a day, probably 15, 20,000 contains or upwards. A lot of them contain hazardous material, and there are two million people in that area that just live along that one corridor. I have no open space. Streets define cities, so I am extremely populated. When there are 54 rail crossings, which makes it an even worse scenario for some kind of derailment, I still contend that the railroads should work with us, with the Nation to ensure the safety and security.

I know there is an issue with the hazmat placarding. We need to address that. We need to address the security of the employees and the people that we traverse through. Of course, we have got to ensure that we have a good training program for your employees who will then deliver the goods intact.

With that, thank you, Mr. Chair. That is my two bits.

Mr. DUNCAN. I have just been told there is no one else on our side that wishes to make an opening statement, is that correct?

All right, thank you.

Ms. BROWN. [Presiding] Thank you.

Are there any other opening statements on our side?

Okay, we will proceed with the first panel.

Mr. Norman Rabkin with Homeland Security and Justice, U.S. Government Accountability Office, Managing Director, Washington, D.C., welcome.

Mr. William Millar, American Public Transit Association, President, welcome.

Mr. Peter Pantuso, American Bus Association, we really haven't done anything in that area, and Mr. Fred Weiderhold, Amtrak Inspector General and Michael Siano, the Amalgamated Transit Union International Executive Vice President, welcome to the Committee, and you can straighten out your names as you go forward.

TESTIMONY OF NORMAN J. RABKIN, MANAGING DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GOVERNMENT AND ACCOUNTABILITY OFFICE; WILLIAM MILLAR, PRESIDENT, AMERICAN PUBLIC TRANSIT ASSOCIATION; PETER PANTUSO, PRESIDENT AND CHIEF EXECUTIVE OFFICE, AMERICAN BUS ASSOCIATION; FRED WEIDERHOLD, INSPECTOR GENERAL, AMTRAK; MICHAEL SIANO, INTERNATIONAL EXECUTIVE VICE PRESIDENT, AMALGAMATED TRANSIT UNION.

Mr. RABKIN. Thank you, Ms. Brown. I am Norm Rabkin with the GAO, the Government Accountability Office.

Ms. Brown, Mr. Duncan, Mr. Shuster, Mr. Mica, members of the Subcommittees, thank you for the opportunity to participate in this discussion on the security of the Nation's transportation systems.

In September, 2005, we reported on the efforts to secure the Nation's passage of rails systems. We have recently initiated work on the security of commercial vehicles and freight rail and will soon initiate a review of highway infrastructure and will follow up on our report on the passenger rail system.

The decisions on how to secure surface transportation systems, what should be done, where it should be done, who should do it, how much should it cost, who should maintain it, all need to be made in the context of the fact that the Country cannot sustain the current fiscal policy. The Comptroller General has been telling the Congress and the Country that among the solutions to this impending crisis is strengthening the Federal budget and legislative processes and controls. Today, as we talk about investing hundreds of millions of additional Federal dollars, perhaps even billions of dollars, in needed security for surface transportation systems, we need to keep in mind that resources are limited and that there are many other worthy claims on each dollar. In this light, it is very important that Congress, the Administration and the other stakeholders in this process be in agreement with the national strategy for securing the passenger rail system as well as the rest of the transportation sector.

The problem, of course, is that there is no national strategy to agree to. DHS has not fully met the expectations of Congress and the President. DHS has not yet issued its transportation sector-specific plan and supporting plans which are to identify their TSA strategy for securing all transportation modes including passenger rail. These plans are important for establishing and clearly communicating the roles and responsibilities of all transportation stakeholders. They also provide a basis for DHS to allocate limited resources among competing demands.

Regarding risk assessments, both DHS and DOT have completed numerous risk assessments of passenger rail systems around the Country and have provided technical assistance and training to rail operators to help them assess the risks that they face. DHS has also begun to develop an overall framework to help agencies in the private sector develop a consistent approach for analyzing and comparing risks to transportation and other sectors. However, although progress has been made, these risk assessment efforts have not yet been completed or fully coordinated. Until they are, it will be dif-

difficult to compare risks within the rail sector and across the different sectors and to allocate resources accordingly.

Regarding Federal actions after the 9/11 attacks, the Transportation Department took a number of efforts to strengthen the security of rail systems including providing security training and technical assistance to rail operators. DHS has issued security directives, piloted explosive detection technology for use in the rail system and recently issued a proposed rule addressing passenger freight rail security. DHS has also provided hundreds of millions of dollars to help enhance rail security through several grant programs, and its fiscal year 2008 request for the transit security grant program is \$175 million.

Although not all of these activities have been well coordinated or well received, they have enabled system operators to implement programs to better protect their systems and their passengers against terrorist attacks and to be better prepared to recover from any attacks that occur.

Finally, DHS and DOT have signed a memorandum of understanding, and their relevant components have agreed to specific annexes that delineate roles and responsibilities regarding passenger and freight rail security. We have not yet examined how DHS and DOT are implementing these agreements but plan to do so this year.

In summary, we are encouraged by the increased Federal focus on the security of surface transportation modes. A clear strategy, strong Federal coordination and continued leadership from the Congress, DHS and DOT will be needed to help ensure that actions and investments are designed to enhance security and are appropriately focused and prioritized.

Madam Chairwoman, this concludes my opening statement. I will be prepared to answer questions at the appropriate time.

Ms. BROWN. Thank you.

Mr. MILLAR. Chairwoman Brown, Mr. Oberstar, Mr. Mica, Mr. Duncan, Mr. Shuster and all the members of the Committee, thank you so much for inviting us to be with you today.

I am William Millar. I am the President of the American Public Transportation Association and, on behalf of our 1,500 members, we are pleased to be testified on the Rail and Public Transportation Act of 2007, H.R. 1269. We appreciate that you have made the security of the tens of millions of Americans who use public transit every day and the hundreds and thousands of workers who work in our industry, make their security a high priority, and we look forward to working with you as you move to complete this bill.

As Mr. Duncan said, this Committee has acted on several other occasions in these areas. Unfortunately, the rest of the Congress has not seen fit to go forward. I hope this is our time when the train pulls out of the station and makes it successfully to its destination.

Now today is a weekday and, as a weekday, 34 million times, Americans will board public transportation vehicles. That compares with less than two million times that they will board the Nation's airlines. So you can see it is an important part of our transportation network and one that is heavily used.

Unfortunately, security has been a priority with our industry for many years, long before that fateful day in September of 2001 because, as our friends from the GAO have reported on several occasions, public transit is among the most frequent target of terrorist activity around the world. We have stepped up our activities since September 11th, and transit systems have spent more than \$2.5 billion out of their own budgets with only a pittance of Federal assistance to encourage the development of better security. We can do more, we should do more, and we urge the Congress to increase Federal investment in transit security.

Our industry has identified some 6 billion worth of needs that ought to be done to improve security. Some of these are very complex. Some of them are very simple: capital investments such as interoperable radio systems and communications systems, more security cameras, automatic vehicle locator systems and simple things like better fencing and protection at the facilities where our employees work. We also need investment in so-called soft costs such as better law enforcement, overtime costs, extra security, more extensive training of workers, to just name a few of these.

We also ask that the Congress provide funds to sustain an increase of the very successful Transit Security Standards program that our organization has developed in cooperation with DHS and DOT. We also urge the Congress to provide a funding mechanism for the Public Transit Information Analysis Center, the so-called ISAC, which allows effective communication of important intelligence information with public transit systems across the Country, also, interestingly enough, allows reverse communication back to DHS so that they can be aware of what is going on in the field. These are common sense improvements that should be made and should be funded by the Federal Government as part of the larger war on terrorism.

Now let me turn to the specifics of the Rail and Public Transportation Security Act. We strongly support the proposed \$3.36 billion that would be invested over a three year period under this bill. It would go a long way in plugging some of the holes that I have outlined here. We appreciate that the bill is designed to cover both some of the operational costs and capital costs that I have referred to.

We do want to encourage the Congress to allow flexibility. Needs vary substantially, different cities, different transit agencies. Large rail systems may have different needs than large bus systems. Both have different needs than commuter rail systems have. We need some level of flexibility in how they are implemented.

We strongly support the notion of coordination between the Department of Homeland Security and the Department of Transportation as envisioned in this bill. We are very pleased that the bill and, from what I can take, the members' opening statements, that there is strong support to make sure that the grant-making mechanisms of the Federal Transit Administration are used to make sure that whatever money the Congress makes available is distributed quickly, fairly and that the appropriate checks and balances, the audit and all those things that are required are in place and should be used, and we do appreciate this Committee's recognition of that.

While there are many things to like in this bill, it won't surprise you that there are a couple of things that we have some concerns about. The bill, as we understand was originally drafted, requires a local match. We can see no possible justification for a local match in a national security issue. We do wonder what 500 additional rail inspectors, many of whom do not understand the transit operating environment, will do. We worry about the negative impact of potential civil and criminal penalties on public employees.

We want to be sure that the grant funds are delivered quickly and properly and spent right. We think by running it through the Department of Transportation, using their existing mechanisms, is adequate protection.

I see my light is blinking, and I could go on and on. So let me just summarize by saying thank you very much. We appreciate the strong position you have taken and look forward to working with you in the enactment and administration of this bill.

Thank you, Madam Chair.

Ms. BROWN. Mr. Pantuso?

Mr. PANTUSO. Yes, thank you, my thanks to the Committee.

My name is Pete Pantuso. I am the CEO of the American Bus Association. We appreciate your scheduling this hearing. We also appreciate your consideration of H.R. 1269, the Rail and Public Transportation Security Act of 2007.

The American Bus Association and our members take very seriously the security of our passengers, our equipment, our facilities and our personnel, and we will greatly be aided in the efforts to protect our industry and our 650 million passengers with further security funding.

In the time I have today, I would like to accomplish a couple of things: number one, to tell you about the ABA membership, who we are, what we do and what our interests are in transportation and in security; second, detail the efforts that ABA and its members have undertaken in security since 9/11; and third, give you ABA's view of H.R. 1269 and its provisions.

The American Bus Association is the primary trade association representing the private over the road bus industry as well as thousands of tourism attractions and icons in places like Washington, D.C., New York City, Oklahoma City and every city throughout the Country. As I mentioned, the private bus industry transports approximately 650 million passengers every year, a total that compares favorably with the number of passengers carried by the Nation's airlines. Moreover, ABA members link some 4,000 communities across the Country.

The difference between the private bus industry and airlines is that bus operators are in every community. They are small mom and pop businesses. They operate with little or no Federal, state or local subsidy. As the Federal Government continues to fund, and well deservedly, the airlines from terrorist attacks, funds should also be provided to the private bus industry who similarly move hundreds of millions of passengers and whose funding mechanisms have been lacking from this Congress. Indeed, the private bus industry's minimal security funding has been limited to modest amounts through the appropriations process, typically averaging less than \$10 million per year since 9/11 and typically overseen by

the Department of Homeland Security. For fiscal year 2007, for example, the Department of Homeland Security has divided the funding mechanism into two tiers, the larger share of resources only available for larger companies. In fact, only four companies have received approximately 80 percent of the limited amount of funding in current fiscal year 2007.

ABA's operators have made effective use of past funds, limited though they were, and operators priorities are certainly training and threat assessment, threat recognition, crisis management. They have also identified that in the future, they need equipment. They need emergency phones, GPS devices and other communications systems that will link them to first responders. They need driver shields. They need cameras in bus facilities and cameras on board buses and in staging areas—all equipment necessary to protect the passengers that they move. That is why the funds provided by the Rail and Public Transportation Security Act are so necessary. When the average ABA member has five to eight motor coaches, the industry lacks the wherewithal to support even modest security enhancements without Federal funding.

ABA did help develop a training program for bus industry personnel in 2003 and 2007 with the help of DHS funding. That program trained personnel in threat assessment, threat recognition, crisis management. It trained security and safety directors of bus companies and had them go back and train other employees. The ABA distributed security training materials, instructional CDs, provided information on a security web site, all of which was available to assist the private industry. We trained hundreds of individuals. We trained 700 companies out of a total of 3,500 companies. But despite those promising results, that program has been halted because of a lack of DHS funding for the future.

With all I have said, it should be clear that the American Bus Association and its members support H.R. 1269. The bill authorizes \$87 million over 4 years for bus security grants for the private industry. While the increase in bus security funds is certainly appreciated, equally important is Section 9 of the bill which details the use of the funding for construction, for modifying terminals, for protecting drivers, for installing cameras and video surveillance systems, for establishing and improving emergency communications and for passenger screening where appropriate. Subsection C allows private operators who are eligible for grants to receive those grants from the department with consultation from the Department of Transportation, and we think that is critically important.

There are other provisions of the bill that we are very, very happy with and, as Mr. Millar pointed out, there are some things that we would like to see changed.

But, in conclusion, we want to offer our thanks for your considering this bill and putting this bill together. We hope that it will receive favorable consideration from the full House at the earliest opportunity, and the ABA looks forward to working with both Committees and the Chairmen and Ranking Members from both Committees to make sure that security for the private over the road bus industry is top of mind.

Thank you for your assistance.

Ms. BROWN. Thank you.

Mr. WEIDERHOLD. Thank you, Madam Chairman and members of the Committee.

The Rail and Public Transportation Security Act, H.R. 1269, is a significant piece of legislation, probably the most important legislation affecting rail and transit security since 9/11. I thank you, just as Mr. Millar and others on this panel have thanked you, for listening to the passenger rail community and for working with the DHS committee in moving this legislation forward. I know that there were some missed opportunities in the Congress, and I thank you for those efforts as well.

I want to be the first witness who tells you that you cannot act quickly enough. Madrid, London, Mumbai are wakeup calls. In using that metaphor, I think some people have just pushed the snooze alarm. We need to wake up. We do not have the time that we think we have to address these serious problems.

I cannot and will not tell you that the passenger rail sector is fully prepared. It is not. Certainly, in locations like New York City, very much to the credit of Commissioner Ray Kelly and others, we have made inroads. We have made real progress, and progress has been made in substantive pockets in other areas of transit and the freight side, but I cannot say the same is true for all of the critical properties used by Amtrak. We do not have enough K-9 units at our stations, we do not have police and security on our trains, and we have not put into place many of the physical countermeasures that our vulnerability assessments have concluded are needed.

Amtrak plans to do more. This does not mean that we do not know what to do.

I think to Mr. Duncan's and Mr. Mica's comments, if after five years, gentlemen, we don't know what to do and we are not smart about how we invest that money, then shame on us. I think we can learn a lot from what was done correctly and what was done incorrectly on the aviation side. You cannot pick up a lot of what has been done in aviation and move it over to our open system, but there are lessons learned there, and I think we can be very smart about the money that would be authorized for rail and transit security.

I would also urge you to find a way to exact the best kind of cooperation between DHS and DOT to get the real synergisms. I know that is not an easy task. The simple fact is that passenger rail and transit have familiarity with the grand processes and regulatory and safety oversight roles played by DOT. There is a comfort level there.

The sector's experiences with DHS, quite frankly, are mixed partly because of the newness of the Department, the reorganizations of the Department. I don't know what iteration we are on right now, but when you meet with a lot of DHS folks, they don't have business cards that have their current title and organization. This does mean that they are not good people. This means they are trying to hang in and do a difficult job under difficult circumstances.

Also, TSA traditionally has been aviation-centric. In the early days after Madrid when I went over and met with DHS and TSA representatives to hammer together the security directives, I met with people from the aviation sector and from the Coast Guard.

There was no one present from the rail business and, at that time, they did not know our business well.

With respect to the specific provisions of the bill, I want to highlight just a couple of points from my written testimony. First, in Section 4 with respect to the risk tiers, again to the members' comments, you cannot cover all the bases; you should not try to cover all the bases. You need to assign those risk tiers that are out there. The language you have in the bill right now refers to providers, and I would recommend to you strongly that you also look to critical assets or systems.

You look at a station like Washington, Union Station over here, which is probably in everybody's target folder, high iconic value in the shadow of the Capitol. Yet, we have a station that if you just assign vulnerability, if you just require vulnerability assessments and risks on a provider basis, you have got Virginia Railway Express, you have got the MARC trains, you have got Amtrak, you have got WMATA that would be coming in—of which, what is their status? How would they be prioritized? It would be far better to prioritize that station, that locale as an intermodal point that needs to be prioritized.

The other thing I would recommend is that you ought to mandate linkage between vulnerability and security plans between and among providers. Amtrak shares property with 23 different transit organizations across the Country, and yet in none of those plans are the security plans and vulnerability assessments linked together. That is an oversight, and that needs to be fixed.

With respect to Section 7 of the bill, the rail security assistance, most of you know that Amtrak has received \$22 million from DHS over the last three years. I think this bill goes a long way in allowing Amtrak the opportunity to have access to a far greater amount of funds, and I want to give you my assurances from an IG perspective that we will do everything we can to protect those funds.

Section 10, fire and life safety, most of you know that we have a large fire and life safety project underway in New York City. If you have not been up here to see it, I would invite you to come see it because it will show you what we can do with those monies. It is extremely important to protect those tunnels.

I see my time is up.

Madam Chair, I appreciate the opportunity to testify today, and I am ready for your questions.

Ms. BROWN. Thank you. We do have questions for you.

Mr. SIANO, welcome.

Mr. SIANO. Chairman DeFazio, Chairwoman Brown and Ranking Members Duncan and Shuster and members of the Committee, on behalf of more than 180,000 members of the Amalgamated Transit Union, I want to thank you for giving me the opportunity to testify today. I also want to applaud this Committee's continuing focus on this important and urgent issue.

The issue of transportation security is one that our members are confronted with on a daily basis. As vehicle operators and mechanics, our members are responsible for protection, safety and security of not only themselves but also their passengers. This is an awesome responsibility and one our members are ready to live up to so long as they are provided with the tools and training necessary

to equip them to prevent or, if necessary, respond to terrorist or other emergency incidents.

Faced with the reality of terrorist attacks against public transportation, the ATU has, for years, worked to raise awareness of our members and their employers to this danger and to advance real concerted solutions and initiatives to enhance the safety and security of the systems operated and maintained by ATU members. We strongly believe that the labor community must be a part in any effort to address the security threats facing our industry.

For that reason, we have worked with our members, the transit and bus industries and officials in all levels of Government including many members of this Committee. The transit and over the road bus industries have taken admirable steps toward securing their operations, but due in a large part to funding constraints, they have not gone far enough. The reality is that these industries and the ATU cannot do this alone. The Federal Government must step up to the plate and provide the necessary funding, guidance and even mandates to provide the level of security that transit and over the road bus passengers and employees deserve.

On the issue on funding, the ATU supports the figures presented by Mr. Millar in his written statement to the Committee. In addition, we join our partners at APTA in urging the Committee to reconsider the issues of matching funds for transit or over the road bus security grants.

I would like to focus my comments today on another aspect of security which my members consider to be the most important thing that we can do to enhance the security of our public transportation system, front line employee training. While we should not abandon research and development, the new technologies we need to recognize that have been proven to be the most cost effective security measures is employee training. Each and every front line transit employee, including rail and bus operators, customer service personnel and maintenance employees, must receive security and emergency preparedness and response training. Security experts, Government officials and transit and over the road bus industry officials have all agreed that training is the most essential element on an effective security regime.

In fact, just last week, the TSA Office of Grants and Training issued a bulletin which highlighted the importance of annual front line employee training and announced that the decision of the Agency to elevated priority to applications for grants for security training. We are pleased that the Agency has recognized the importance of training. Experience tells us that without the adequate funding and mandates, the necessary training will not be provided.

The National Transit Institute which is funded by the Federal Transportation Administration has developed numerous mode and employee-specific training programs that have been widely approved and tested by union, industry and Government officials. Unfortunately, these programs, which are available free of charge to any U.S. transit agency, have only been provided to less than a quarter of our Nation's transit employees. Unfortunately, transit systems continue to resist calls for training because of the operating costs to pay employees and keep the buses and trains running during training sessions. It is time for the Federal Govern-

ment to step in and provide funding for the operating costs associated with training and to further require all transit systems to train all front line employees.

I want to applaud the members and leaders of this Committee for recognizing the need for Federal Government action in this realm. The recent introduction of the Rail and Public Transportation Security Act of 2007 as well as legislation passed by this Committee in the previous session will go a long way towards addressing the needs of our Nation's transit systems and their employees. Not only will this legislation provide significant funding resources directly to transit agencies and over the road bus companies for crucial capital enhancements, but it also recognizes the need for training by requiring that all front line employees receive the necessary training.

The bill will further require consultation with employees and representatives in the development and implementation of security priorities and measures. The ATU is very supportive of these provisions.

I thank you again for the opportunity to testify today on behalf of the ATU. I cannot stress enough how important it is to include the input of transportation labor in this discussion. It is our members who are on the front line of these battles and who know best what dangers they face every day on the job. I appreciate your recognition of this fact and look forward to working with you to address the important issues raised here today, and I would be happy to answer any questions that you may have. Thank you.

Ms. BROWN. Thank you and thank all of the panelists.

Now we will go to the Chairman of the Committee, Mr. Oberstar, for his opening remarks or comments or begin the questioning.

Mr. OBERSTAR. Thank you, Madam Chair. Thank you and Mr. DeFazio for laying the groundwork for this hearing and working together cooperatively and for the Ranking Members as well participating in what is a very critical subject matter for us, transit security and rail security.

I have a statement which I will submit for the record.

Mr. Siano, you really touched a sensitive chord. Your members are front line. We need your thoughts and suggestions as you speak for those who are the first ones to be struck when terrorism hits us wherever, in the Heartland, in the air, on the ground, on the waterways.

In fact, just last week as I was participating in an Amtrak conference in Philadelphia and talking with the engineer on the Acela, discussing security issues, what do you see as a locomotive engineer, things that are a concern to you. I got an earful from one of your members or one of your brothers in Transportation. One of those concerns was fencing. Mr. Millar and other members, yes, we do need to put fencing up. It is an obvious deterrent. But that, in and of itself, is insufficient.

I don't want to go into it, but we looked at fencing on port security, for example, and putting miles and miles of fencing around the Nation's ports and how quickly they can be penetrated. It is an obvious deterrent, sure.

In Northern Minnesota, in my district at airports, there are fences put up, several miles of fences around those rural airports,

and they keep out the deer and the timber wolves, a really good job with that, but I think a determined terrorist could get through those things very quickly.

So what supplementary, what overriding types of security do your members need? Your transit agencies are on the front line. Siano's members are running the buses and the transit vehicles, and they see it first hand. What additional do you need?

Mr. WEIDERHOLD. Thank you, Mr. Chairman, and I appreciate your comments and understanding very much.

We completely agree it is a whole series of things that need to be done. Certainly, it starts with the employees and the management and having a good plan and educating all at the authority as well as the law enforcement and the first responders in the area as to what that plan is and what is needed.

Second, it is physical things. Sometimes it is simple, like fencing, but it is not just fencing. It is then making sure there are proper cameras and things that can watch that perimeter. It is making sure that our vehicles can be tracked and located. We now have very sophisticated technology available to us, but many transit systems can't afford it, automated vehicle locations, things of that sort.

For our larger members who operate extremely sophisticated facilities such as extensive systems of tunnels, it is making sure about what is called intrusion detection systems that are up to date. It is making sure that the chemical and biological detection systems are developed for our industry and deployed as appropriate in the number of places that are there.

It also about working with our customers. Along with our employees, they are the people who are going to see what is going to happen first. So making sure that we have proper outreach to our customers, that they know what to do if they see something out of place, on and on.

Mr. OBERSTAR. I am going to interrupt you there. That is an excellent catalogue, if you will—training, surveillance, tracking of transit vehicles, intrusion detection systems and passenger awareness, if you will.

Mr. WEIDERHOLD. Yes, sir.

Mr. OBERSTAR. May I ask the GAO representative, Mr. Rabkin, your reaction to that, just very briefly, very quickly, your response to those, to that catalogue, if you will?

Mr. RABKIN. I think that an integrated approach to rail and transit safety is certainly called for. I think it all starts with coordination and the Federal Government taking the leadership. I think Congress has already spoken on that, and the President, the Administration also. The DHS has the leadership. They ought to come out with their strategies of how the various sectors ought to work together, what are the principles of security, and then industry and the Federal Government can take it from there.

I think there has got to be some discussion of balance and, as I said earlier, who is going to pay what for what kind of investments, both capital and operating. Once those decisions are made, I think that applying the security needs at the local level on a risk-based approach can be done. It can be done a lot more easily.

Mr. OBERSTAR. Mr. Pantuso, do you think the DOT and DHS are applying best industry practices to security as to your members?

Mr. PANTUSO. In the case of our members, sir, no, absolutely not. Each one of our members are, for the most part, very small business people. They are all very different in terms of the types of services that they offer. There is very little opportunity for them outside of some limited DHS funds and what we have done to access training, to access threat awareness, to put together a plan, to understand what the assessment needs to be. The fact that we have only trained a few thousand people out of 150,000 employees is a problem in our industry.

The biggest challenge I think that we have, that I think DHS and DOT haven't been able to overcome so far is coordination between the two organizations and with other modes. I have testified before your Committee, Mr. Oberstar. For example, FTA in working with Mr. Millar's members have a tremendous amount of information and resources and training materials. Since we are very similar systems, we are open door bus systems, if some of that could even be shared with those that we work with DHS, that would be a big step in the right direction.

Mr. OBERSTAR. Amtrak could certainly use metal detectors at check points and entry points, not as extensive as for aviation but certainly they could use some of the aviation technology, Mr. Weiderhold.

Mr. WEIDERHOLD. I think there is some opportunity. We, obviously, have had a couple of tests of those types of equipment on our properties and found for the most part that they really can't handle all of the volumetric flow that we have going into the stations at certain times, but I would say during periods of heightened threat alert or if there has been an attack that is close to home, then yes, something must be done around screening, absolutely.

Mr. OBERSTAR. And intrusion detection systems as well?

Mr. WEIDERHOLD. Well, I can tell you tunnels have come up several times this morning, and I share the concern in and around tunnels, especially tunnels underwater. As an IG, I go out and I try to look for best practices because a lot of the way we evaluate how well the company is performing is we want to look at what the best practice is and do a gap analysis around that best practice. I can tell you that there is no standard for best practices for tunnels.

As an engineer, I can tell you that a lot of these tunnels that were built into the 19th Century were what we call built to last. They were built with granite. You go to the Baltimore Potomac tunnel, the First Street tunnel, trust me, those things are very substantial. If you go to the underwater tunnels in New York in the Hudson and East Rivers, those are cut and fill tunnels. They have greater vulnerabilities. We are very concerned about that, and we are trying to do things to mitigate that exposure, but we need intrusion detection.

You also need, if you have someone coming in, you need to take that person down, and we are looking at means and methods to do that too.

Mr. OBERSTAR. Thank you.

My last question, Mr. Millar and I think other members as well, one of the issues we are going to face as we move into the legislation, as we move the legislation forward between our Committee and the Homeland Security Committee, is grant administration.

Your experience has been that DOT has computer software to track and monitor the flow of dollars and to prioritize needs. On the other hand, Homeland Security has had four separate offices that they shifted in the course. That is really extraordinary in such a short lifetime of this agency, to have changed the servicing of transit agencies with these security grants.

Your very firm recommendation, would that be concurred by others, that the grant administration be run through the Department of Transportation?

Mr. MILLAR. Yes, sir, that is. I mean the policy should be set by the Congress. If the judgment of the Congress is to centralize it at DHS, that is fine, but let us use the other resources of the Government. The Federal Transit Administration has been giving out grants for 40 years. They have a well developed system. They have a system of checks and balances. They have, after the grant has been made, the ability for audit systems, things of that sort. Why not make use of what works?

DHS, as you said, four different arrangements in five different years, there are still grants from 2004 that haven't yet been fully utilized because the rules keep changing, a very difficult, complicated process.

Mr. OBERSTAR. Mr. Pantuso, do you have a comment to make?

Mr. PANTUSO. No. We would agree very much with what Mr. Millar said. Obviously, the system isn't working right now. To the extent that moving it somewhere else or at least better coordination between the two departments will help tremendously in our own members' efforts.

Mr. OBERSTAR. Mr. Weiderhold, do you have any comments?

Mr. WEIDERHOLD. In my oral testimony, Mr. Oberstar, I pointed out that there is a lot of familiarity with passenger rail and transit with DOT and some comfort level that exists on that plane. It is a tough call because clearly DHS is here and DHS has certainly, I would call it, security policy drivers in this organization. But with a gun to my head, this is like asking a child of divorced parents, who do you like more, mommy or daddy; we have to live with both of them. It is a tough question.

[Laughter.]

Mr. OBERSTAR. Thank you very much.

My time is well beyond the point, and I am grateful, Madam Chair, for this time, and thank you very much, Mr. Shuster and Mr. Duncan also for your corresponding participation in these areas and your work in the past Congress on these subject matters.

Ms. BROWN. Thank you.

Mr. Duncan?

Mr. DUNCAN. Since this is a joint hearing, I want to go first to Mr. Shuster for questions.

Mr. SHUSTER. Thank you, Mr. Duncan, and thank you Chairwoman Brown. Because we have a time schedule, I am just going to ask one question, but I would like to submit several other questions to the panelists to get their responses.

Mr. Millar, your frustration came through, and you started to talk about and didn't have time. My question is concerning the grant programs at DHS, can you elaborate on some of the frustrations you have had with dealing with DHS in getting these grants?

Mr. MILLAR. Yes, well, first there is knowing what their policy is and they change it every year, so it starts at that very basic level.

Second, it is the structure that they use. Once the Congress sets some money for this purpose, then DHS puts its spin on it. Then it sends direction to each of the 50 States to the security offices there. Then from there, it goes down to a regional level. Then our transit systems have to participate in a competition at the regional level. Then it goes back up the chain. If there is something that gets back up that they don't like, it goes back down the chain. Six months goes by. Twelve months goes by. Eighteen months goes by, the money that you thought was being invested in security to improve things for the American public doesn't happen. So it is a very frustrating thing for our members.

I have a quote. I did a little survey work, knowing I was coming here. I had my staff call our members. Let me just read you a couple quotes from a couple of transit systems this week: For the sake of five to six million dollars, we go through an incredible bureaucratic process that is unlike any other program, that from one of our major systems that has high quality staff people. They know what they are doing, and this is their assessment of what it is. I could go on and on and on with quotes from many other people.

It is not a good system, sir.

Mr. SHUSTER. Is that through TSA or DHS.

Mr. MILLAR. This comes through DHS. It is the Office of Grants and Training, I believe is what it is called this week.

Mr. SHUSTER. Thank you.

I yield back.

Ms. BROWN. Before I ask my first question, let me just say that I have asked my Jacksonville Transit Authority Director, Michael Blaylock, to join us today, and he is here. Welcome, Mike.

Mr. Weiderhold, Amtrak?

Mr. WEIDERHOLD. You can just say Amtrak. That is fine.

[Laughter.]

Ms. BROWN. Okay, in a conversation the other day in the hearing, you mentioned that DHS and DOT have done little to help Amtrak improve security. You stated that Amtrak is not even on the DHS radar screen. What has been done and what are some of your recommendations?

Mr. WEIDERHOLD. Well, I think I may overspoken a little bit there. Clearly, we are on the DHS radar screen, and we talk to DHS. In fact, our new Chief Risk Officer is a former high ranking DHS infrastructure protection person. We are certainly glad to have him on staff.

I testified earlier that Amtrak has only received \$22 million over the last 3 years, and Amtrak also committed a lot of its own monies to doing things around safety and security, but I think a lot more could be done. I think we are getting smarter about how we need to spend the money that is out there. We would like to see kind of a firmer, stronger handshake between DHS and DOT and be a party to that handshake.

Ms. BROWN. Okay, the next question is very important. The AAR have opposed limiting freight railroad liability for accidents involving hazardous material. I understand that under current law, Am-

trak is liable for all train accidents even if the accidents were due to the freight railroads' negligence. Not counting grade crossing accidents, would you say that most accidents involving Amtrak are the fault of the freight railroads and, if so, what impact has that had on Amtrak?

Mr. WEIDERHOLD. I am not an expert in this area, but I have been with the company for 30 years, so I think I am qualified to answer the question. Excluding the rail grade crossings, I would say that absolutely what we call the rail equipment accidents that involve our trains are generally the fault of wide gauge-narrow gauge doing things associated with the track.

Ms. BROWN. In your opinion, how much progress has the U.S. made on rail and transit security since the Madrid bombing? I went on that trip to London, and it seems as if in London, the station is secure as opposed to when you go in the station.

Mr. WEIDERHOLD. The short answer is not nearly enough has been done. I can tell you the standard I use when I go to various properties that are out there. I use New York as my gold standard. New York has what we call in the vernacular, a game face. They get it. They feel the threat. They have made a commitment to it. The city has. The State has. The carriers have. So that is my standard.

I will go to look at Washington or Los Angeles or Seattle or any other major urban station that we have, and I wish they were all as ready as New York is.

Ms. BROWN. GAO, you noted a conflict between FRA and TSA regulations. It seems to me that DOT and DHS needs to coordinate better and that the future legislation should recognize the need for the agencies to coordinate on these initiatives. Can you expand on that?

Mr. RABKIN. They have signed a memo of understanding between the two departments and then there have been two annexes signed between FTA and DHS and between FRA and DHS. The question is whether they are actually carrying out what they have agreed to and whether what they have agreed to goes far enough to accomplish the mission that Congress expects of all those agencies. Those are questions that we plan to be asking this year as we do our work on both freight rail and passenger rail, and we look to informing the Subcommittees of our results in the next year or two.

Ms. BROWN. Mr. Siano, can you explain what type of security training your workers are now getting and what improvements do you think need to be made?

Mr. SIANO. Well, I guess that is pretty simple. The training that we are getting now is practically nil, means nothing, that I am aware of on any type of level. I mean we might be getting some very small amount of training about identifying people as they board on the buses or into any property that we have, but the security guards are not there for property entrance. There is very little of anything that is locked up.

They do, my understanding is throughout the industry, they do lock up at a certain time at night, all doors, and you have to go through probably one entrance and one exit at night for employees leaving and coming that time of night. But during the day, you have got to understand, bus garages, for the most part in the sum-

mer time, in warm weather, all the doors and bay doors are open to get somewhat of cross breeze. So that is an open invitation to anybody to walk through.

We have other situations where our bus cleaners because at night the bus has to be cleaned inside and out, and we have a tremendous amount of people sleeping in buses. They have no place to go. So what they do is they wander into a bus garage, and they fall asleep. They intend to fall asleep. You know we got to roust them up, and sometimes it is not a pretty situation because some of these people, who are very ill, protect themselves with any weapon that they have on them, mostly knives. And so, we are getting harassed.

The notion that these garages throughout the Country are completely secured, let alone during the day, at night, they are not even secured. So we have a tremendous amount of break-ins. We have a tremendous amount of entry by strangers, and obviously we don't know what for. They could be terrorists. We don't know. We haven't been hit rather big on that situation, but we do have it on occasions.

It is a tremendous burden on us to be careful of people wandering on properties. We are charged with that responsibility, and it is not part of our job description, and it should not be.

Ms. BROWN. Thank you.

Mr. Duncan.

Mr. DUNCAN. Well, thank you, Madam Chairwoman.

I thought Mr. Millar made a good point when he talked about the fact that we have so many billions more that are taking rail, bus and public transit than on the airplanes. I think the staff tells me 9.6 billion passengers a year on public transit, and that compares to about 700 million on the airplanes. Really, we are going ridiculously overboard. I was on the Aviation Security Conference Committee, but we are going ridiculously overboard at the airports, screening passengers, confiscating shaving cream and shampoo and an occasional pocketknife.

But I do recognize that more needs to be done on this particular type of security we are dealing with here today. I also realize that every member is going to say that we need to do more and more and more in regard to security so they won't get in trouble if something bad happens, but at some point, we need to recognize that you are several thousand times more likely to be killed in a car wreck or even many, many times more likely to be struck by lightning than you are to be killed by a terrorist.

I would like to read a quote that was testified or that was said at a Senate committee a few months ago by a witness. He said, "We should not let an over-exaggerated threat of terrorism drive us crazy, into bankruptcy, trying to defend against every conceivable threat. We do have limits, and we do have choices to make. We don't want to break the very systems we are trying to protect. We don't want to destroy our way of life trying to save it. We don't want to undercut our economy trying to protect our economy, and we don't want to destroy our civil liberties and our freedoms in order to make ourselves safer."

That was a quote from Secretary Chertoff, the Secretary of Homeland Security.

What I am saying is this, we just need to look very carefully, as the Wall Street Journal editorial said that I quoted in my opening statement. We need to look very carefully at any request for security. We don't need to just automatically approve anything that has the word, security, attached to it. We have got to make sure we are getting some bang for our buck and that what we are approving is effective and especially cost-effective.

Now, going from that, I have several questions. I am not going to have time to ask them all but maybe in a second round.

Mr. Rabkin, you traveled, you and your people traveled apparently to several other countries, studying their security, their rail and bus security programs. What did you find in some of these other countries that was the most effective or impressive to you or your staff?

Mr. RABKIN. First of all is the same frustration and limitations that we face in this Country: that you can't protect everything and that they had to make hard choices about what they invested in. We found a lot of the same practices and principles that were talked about today in terms of public awareness, intrusion detection, closed circuit TVs, the redesign of stations and infrastructure, which of course is, when you talking about building new, then that makes sense. If you are talking about retrofitting, it becomes very costly.

One of the things that they do that we don't do here, there is a little more covert testing to ensure that the systems are working. They have a little more central focus on evolving technologies, and the governments there will do the testing and share the results of the testing of what technologies work well with the companies that need to use them. There are a couple of things like that that we have reported on.

Mr. DUNCAN. All right, thank you.

Mr. Millar, you gave one quote a few minutes ago from one of your members. Do you have any specific examples of problems that some of your companies or your people have run into in applying for these grants through the Homeland Security Department?

Secondly, you have testified there is a \$6 billion need there. Would you tell us how did you arrive at that? How did you arrive at that figure or is there some independent group that analyzed that and came up with that figure?

Mr. MILLAR. With regard to your first question, our members tell us that the problems start first with understanding what the policy is going to be for that particular year.

The second problem we hear is that since it is passed through the States, you have varying degrees of interest. Certainly, in a State like New York, there tends to be a higher degree of interest than there might be in a State that has not had a terrorist attack in it. At that State level, there is very little understanding usually of what public transit is about and what needs to be done.

There are arbitrary limits put on how the money can be spent. Congress didn't necessarily put limits on it, but limits get put. So for example, paying certain kinds of operating costs, which as Mr. Siano said is important if we are going to pay to keep buses on the street while we are training employees. Transit is not like a product that you can put on the shelf and inventory. The bus that is

to be there at 8:00 a.m. has to be there with a properly trained driver there, those kinds of things.

Then this long process of getting an answer to a question, because you go through several different layers, we all know the old game of telephone where you speak in one person's ear and then the next person and the next person, and you get a different story at the end.

Sometimes, DHS on a couple of occasions hasn't released the money that Congress gave it until the very last day of the year, so you miss many, many months, and the list goes on and on. We would be pleased to provide specific examples.

With regard to the oft quoted number by me and others of \$6 billion, that is a number that we developed based on a detailed survey that we did of our members in 2003, and it was talking with the members. By that point, they had two years of post-9/11 experience. We had learned some of these lessons from around the world that you just spoke of, and we had done assessments. The FTA, and that point, had done almost three dozen security assessments of transit systems. So we were able to piece together all that information. That is our best estimate.

We have offered to the Department of Homeland Security who has frequently criticized our estimate, why don't we work together. Why don't we jointly develop a way of going out? Maybe the \$6 billion number is right. Maybe it is \$10 billion. Maybe it is less \$6 billion. Let us work together. To date, we are still waiting for them to take us up on that offer.

I wish I could give you more detail, but that is the best number that anybody has that we have been able to find.

Mr. DUNCAN. All right, thank you very much.

I have questions for the other members of the panel, but in fairness I am going to yield back at this point. I will ask later.

Mr. DEFAZIO. [Presiding] I thank the gentleman.

Mr. Cummings?

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I just have one question, and this is to Mr. Rabkin. The President has stated in an executive order that Federal, State and local officials and the private sector must share responsibilities for surface transportation security. Tell me, what is the appropriate role for the Federal Government in setting standards that State and local officials and the private sector should meet and are the State and local officials truly prepared to be full partners in ensuring security on the transit and rail systems?

Mr. RABKIN. Mr. Cummings, I don't have an answer to the second part of your question about the preparedness.

We plan to do more work in both the passenger and freight rail areas, and as part of those efforts, we will be interacting with the operators and with State and local government officials and learning more about it. I don't know if anybody is ever prepared to do everything that is needed. I think part of the effort here is to get them to that level. I think I will just leave it at that.

Mr. CUMMINGS. But wait a minute now. Do you see the Federal Government has having a role in setting standards? I didn't hear your answer to that.

Mr. RABKIN. Yes, sir.

Mr. CUMMINGS. Maybe I missed it.

Mr. RABKIN. No. You are right, I didn't answer that first part.

Yes, the Federal Government does have a role in setting standards, and it shouldn't be a unilateral role. They need to work as both the Congress and the President have instructed DHS to work—with the other departments, with State and local governments, with operators, with other stakeholders to come up with standards that would be effective and are achievable.

Mr. CUMMINGS. I see.

I am sorry. Did you want to say something? You look like you are ready to jump over the table. I want to make sure.

Mr. MILLAR. Standards is a very important issue. We are a designated standards setting organization. We have offered to the Department of Homeland Security, let us work together to develop standards. Apropos Mr. Duncan's question, we want to make sure that transit systems know the right things to do, that they don't do too much of it or that they don't do enough. We think a standards program which we have sought to have funded for several years now and which has not been funded. We have funded a piece of it with our own money because we think it is that important, but we think it is a partnership of the Government and the industry working together to set standards, and we would be very anxious to participate in such a partnership.

Mr. CUMMINGS. You have offered to do that?

Mr. MILLAR. Yes, sir, we have on many occasions.

Mr. CUMMINGS. And you have been?

Mr. MILLAR. Well, to be honest about it, at the lower levels, people see it, and they think it is a good idea, but when it goes up the chain in DHS, it has never been approved. It has never been funded.

Mr. CUMMINGS. It seems to me at some point we have got to move off the dime and make things happen. Chairman Brown, I have heard her talk about this, how the American people want us to solve their problems and not just be talking around each other. Consistent with that, I hope that we can begin to move in that direction so that 10 years from now, we are not sitting here, having this same discussion after many people suffered.

I think, as I have said on many occasions, we have one life to live. This is no dress rehearsal. This is life.

And so, I think we need to move on that, and I think it would be good if the parties would sit down and make an honest and straightforward effort to try to get there and that perhaps this Congress should set some timetables for you all to accomplish that because we don't know how long we are going to be here. It is our job to make a difference. If we are not going to make a difference, we might as well not be here.

Considering the fact that there are other members and we will want to move on to the second panel, I yield back.

Mr. DEFAZIO. I thank the gentleman.

Representative Coble?

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Duncan examined Mr. Rabkin along the same lines I was going to pursue, so I won't repeat that.

Mr. Weiderhold, I am told that Amtrak does not control the commercial and retail spaces at Union Station. Has this had a negative impact on Amtrak's ability to control security, station security?

Mr. WEIDERHOLD. Let me just explain that just a little bit. I think there is a lot of confusion about who owns Union Station. Union Station proper, what we call from the gate area north up the railroad, is owned by Amtrak. The main hall, what most of you know as Union Station, is owned by the Union Station Redevelopment Corporation which is DOT, Amtrak and the District of Columbia. They, in turn, contract with Union Station venturers that hire a property manager that leases the space to the retail operators.

It is complex. It is a problem that we are trying to address because up until about six months ago, those players were not fully engaged in our security programs, and we have since engaged them in those programs. So to answer your questions, yes, we have engaged those folks, and yes, it has been difficult when you have properties that have multiple owners and multiple players.

Mr. COBLE. But you see improvement?

Mr. WEIDERHOLD. Oh, absolutely. We have established at Union Station a concept that we call the Station Action Team that basically brings all the stakeholders in. We meet monthly. We go over security issues, safety issues. We have identified and uncovered some gaps that exist at Union Station, and I would love to talk to you about it more, but we are making some headway.

Mr. COBLE. I would be glad to.

Mr. Weiderhold, let me put another question to you. What security precautions does Amtrak take at the ticket counter? That is to say do ticket agents have access to a no-fly list, for example? Do they check ID and inspect baggage?

Mr. WEIDERHOLD. ID is checked primarily to match a name to a credit card. It is done for financial reasons and not really for security reasons. In answer to your question with respect to the watch list, no, absolutely not. There are no Amtrak passengers that are matched against the watch list.

Mr. COBLE. Baggage is not inspected?

Mr. WEIDERHOLD. Baggage is not inspected, sir. On occasion, if we have a canine team present, they may make a sweep, but for the most part the baggage is not inspected.

Mr. COBLE. Mr. Chair, I have other questions, but in the interest of time, I yield back.

Mr. DEFAZIO. I thank the gentleman.

Representative Carney?

Mr. CARNEY. Mr. Millar and Mr. Weiderhold, I appreciate your both coming for the Homeland Security Committee and the T and I Committee on back to back days, not a fate I would wish on anyone frankly.

I hoped to ask you this question yesterday but didn't have the opportunity. TSA continues to emphasize the importance of carriers identifying and reporting security risks to Homeland Security Officials. Has your industry promoted any whistleblower security or protections so that they can report these concerns without fear of retaliation or retribution from employers?

Mr. MILLAR. The majority of our employees are public employees who are covered by whistleblower. While we have not specifically spoken to our members about whether they think more needs to be done in that area, it is a common and normal part of our practice.

Mr. WEIDERHOLD. Amtrak employees are not Federal employees so they are not covered by the general Whistleblower Protection Act. They are, however, covered by the Railroad Safety Act. My office does investigations with respect to violations for railroad accident reporting, and there are also some analogies in the Inspector General Act that has authority over Amtrak. So we are familiar with whistleblower protection, and in fact my office is charged with enforcing that on our railroad.

Mr. CARNEY. All right, thank you.

I yield back, sir.

Mr. DEFAZIO. Representative Boustany?

Mr. BOUSTANY. Thank you, Mr. Chairman.

Mr. Rabkin, thanks for your report, and I read it. I was listening very intently to your verbal testimony, and I want to take a few quotes, one being you said the Country cannot sustain current fiscal policy. The second one was resources are limited. The third quote is there is no national strategy.

As I read your report, I am very, very concerned about the inter-agency cooperation between the Department of Transportation and the Department of Homeland Security. Certainly, you have highlighted what has happened with the memorandum of understanding, and certainly those represent a first step. But in looking at some of the other things we have asked for statutorily, we have asked for certain plans to be presented to this Committee, and as of March 2nd, 2007, TSA has not issued a transportation-specific sector plan and there are others highlighted in your report.

There is a recurrent theme here. The agencies are very good at policy but very poor at implementation. As we look at moving legislatively, what should be our next steps in your opinion?

Mr. RABKIN. There have been a couple of references to disappointments with the Department of Homeland Security and following through on directives that both the Congress and the President have given them, certainly in terms of meeting deadlines and also in terms of substantively coming up with strategies and plans. Holding them accountable by, first of all, ensuring that their activities are more transparent, that more of this information is shared with the committees and their staffs and holding oversight hearings on them to get them to answer these questions is probably the best way to do it.

In our experience, in the end, what it comes down to is they listen to the power of the purse, and if you tie appropriations to their reporting or producing, it seems to get their attention and their track record is a little better at that.

Mr. BOUSTANY. I thank you because I share the same concerns that my colleague, Mr. Duncan, also expressed, and that is we want to take care of security, but we want to do it wisely. To continue to just throw money at a situation where we are not getting results is really not good policy.

As we dig into this, you can bring department heads, but again I guess the power of the purse is the one real stick in this process.

Mr. RABKIN. The appropriations committees have appropriated funds to DHS to carry out their functions and then withheld part of that until they produced plans of how they are going to spend the money, both in that year or over a longer term as part of a broader strategy. That has at least gotten the department's attention and has at least made them more responsive in laying out more specific plans.

One of our frustrations with them, we put them on our high risk list of Federal programs that were more prone to fraud, waste, abuse and mismanagement even before they opened their doors, and they remain on the list because of problems in transforming the disparate agencies that were pulled together into an operating department. They have been focusing on their mission work. Their management activities have evidently been second fiddle. We think it is about time. These things do take time, these kinds of major transformations. But it is time for them to start producing results in terms of how they are managing the department and how they are responding to Congress, et cetera.

Mr. BOUSTANY. Thank you.

Do any of you other gentlemen want to comment on this?

Mr. MILLAR. I will just say we completely agree on that point.

Mr. BOUSTANY. Okay, thank you.

I yield back.

Mr. DEFAZIO. I thank the gentleman.

I had some questions, but I am going to forego at this point because I do want to get to the next panel. I think it would not be fair to ask them to hang around while we listen to the King of Jordan, however long he might talk.

Thank you all for your testimony. The members certainly can submit questions for the record or contact you folks individually to get answers to their questions. Thank you again.

I would call the next panel, and let us move along as quickly as we can so we can hopefully hear from all of them before we become pumpkins.

Mr. Hamberger, Association of American Railroads; Mr. Tolman, Brotherhood of Locomotive Engineers and Trainmen; and Mr. Durbin, American Chemistry Council.

Just start talking, Ed.

TESTIMONY OF ED HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; JOHN P. TOLMAN, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN, A DIVISION OF THE TEAMSTERS RAIL CONFERENCE; MARTY DURBIN, MANAGING DIRECTOR OF FEDERAL AFFAIRS, AMERICAN CHEMISTRY COUNCIL

Mr. HAMBERGER. Mr. Chairman, thank you very much for the opportunity to be here to discuss freight railroad security in general and the Rail and Public Transportation Security Act in 2007, in particular.

I will skip with the background I was going to give on all the activity and actions the industry has taken since 9/11. I believe the Committee is fully aware of that.

The written testimony which I submitted was due at a point in time when we had not had an opportunity to really review H.R. 1269, so I would ask permission to submit more detailed comments on the legislation for the record.

Having said that, I would like to make three points on the bill. First, I want to thank Chairman Oberstar and Subcommittee Chairs Brown and DeFazio for recognizing the unique characteristics of the Transportation Technology Center (TTCI) in Pueblo, Colorado. We appreciate your putting TTCI in as a member of the National Domestic Preparedness Consortium (NDPC). Today, a facility specifically targeted at emergency response training for freight and passenger railroad environments is notably absent from the NDPC, and this corrects that oversight. Similarly, we support the provision calling on DHS to establish a research and development program for projects related to railroad security. I have specific recommendations in my written statement.

Secondly, we recognize the importance of whistleblower protection. I am sorry Mr. Carney had to leave. But the fact is that railroad employees already receive whistleblower protection under the Federal Railroad Safety Act. Creating a new separate system under the Department of Labor seems to be duplicative and potentially confusing since many of the issues may surround both safety and security. We would suggest that perhaps a better approach would be to expand, if you feel it necessary, current whistleblowing provisions in the Federal Railroad Safety Act to encompass security issues so that there is one system and not two parallel systems in existence out there.

Third, the issue of employee training. We do take that very seriously. Working with the National Transit Institute at Rutgers University, we have developed an interactive uniform security awareness curriculum for freight railroad employees. We submitted this training regimen to both DHS and DOT in 2006 and have received very positive responses from them. Recently, TSA inspectors surveyed 2,600 railroad employees and found that 80 percent have a medium or high level of security training. All front line Class I railroad employees will have completed this security training by the end of this year, and we will have written confirmation of that.

As I look at your legislation, I would just draw attention that some of the elements that are in the training requirements might be more appropriate for transit workers than freight rail workers. Training on the evacuation of passengers from tunnels would be one example.

A second example concerns the requirement of our railroad employees to investigate the seriousness of the matter at hand. We believe that the appropriate security training can be stated in three Rs: recognize that something is not right; record what you can, for example, a license plate number; and then report to the appropriate authorities—in our case, the railroad police, local responders or the National Terrorism Taskforce of the FBI. We just think we need to make sure that we are not training our employees to get into dangerous situations.

The last point I would make is the following. It is very appropriate that I am here with a representative of labor and a representative of the American Chemistry Council because we have a

long history of working together with both these organizations on safety and security matters. Thank you for the opportunity to be here today.

Mr. DEFazio. Thanks for that succinct presentation.

Mr. Tolman.

Mr. TOLMAN. Thank you and good morning, Chairman DeFazio, Chairwoman Brown, Ranking Members Duncan and Shuster, members of the Subcommittees.

My name is John Tolman, and I am a Vice President of the Brotherhood of Locomotive Engineers and serve on the policy committee for the Teamsters Rail Conference. Thank you for inviting me here today to testify on the issue of rail security. On behalf of the 70,000 members of the Teamsters Rail Conference, I would like to thank you for the interest in this subject and applaud both the Homeland Security Committee and the T and I Committee for introducing rail legislation.

We look forward to working with you on, I guess, fine tuning that. In lack of time, I guess I am not going to comment specifically on the pieces of legislation.

As you know, the issue of rail security is a vital concern for all rail workers including the Teamsters Rail Conference, members represented by the BLEET and the Brotherhood of Maintenance Away Workers. The Teamsters Rail Conference is dedicated to improving rail security and safety in America in order to adequately protect rail workers and communities they serve. Each and every day, we are on the front lines of our Nation's transportation system and see the woeful lack of security on our railroads.

As you know, there are many components that make of the issue of rail security. Today, I would like to discuss four of these issues: training, whistleblower protection, rerouting of hazardous material and Transportation Worker Identification Credential program.

Locomotive engineers and trainmen and track maintenance workers are the true first responders to rail emergencies, the eyes and ears of the industry. Worker training is one area of grave concern for rail workers because rail security measures have been given very little attention that they deserve. Even since 9/11 and the attacks of rail and transit systems overseas, the security training given the rail employees has been minimal and usually comprised of nothing more than a printed brochure and a 10 minute videotape. Moreover, 80 percent of the members who participated in the rail security safety survey said that they have not received any additional security training since 9/11.

Therefore, we respectfully request that Congress pass legislation that will compel rail corporations to train their employees properly on proper safety evacuation procedures, the use of appropriate emergency escape apparatus, the special handling of hazardous materials and roles and responsibilities of rail employees within the railroad security plans, including an understanding of the plans' threat level index and notification to employees each time the threat level is changed.

Unfortunately, the same employees who are given so little training by the railroads are still being intimidated and harassed when they report security problems. Strong whistleblower protections must be a component of rail security legislation. Railroad workers

should not and cannot be subject to dismissal when they provide security threat information to the Government.

Mandatory rerouting of hazardous materials for safety reasons would further jeopardize the safety of these same employees and the communities through which we travel. Mandatory rerouting sounds like a good idea in theory, but it is not a practical solution except on very rare occasions.

Much of the infrastructure in the industry is at or near capacity, and there are both labor and equipment shortages in many areas. Furthermore, given the nature of the train operation and FRA requirements, locomotive engineers and conductors and track inspectors cannot simply be shifted from route to route the way a truck can be diverted from one interstate highway to another. Qualification requirements are territory-specific and exacting. Simply put, there is not enough slack in the system to reroute hazardous material on a large scale without the system experiencing significant delays and disruptions.

Similarly, the Rail Conference believes that the Transportation Worker Identification Credential program is a mixed blessing. The Conference understands the need for heightened security against terrorist attacks that target American rail facilities and believes that a limited, properly designed safeguard TWIC program as one element of a comprehensive integrated anti-terrorist rail security system could help and protect our railroads from attack. Unfortunately, the program established by TSA in conjunction with the Coast Guard poses a cure that is worse than the illness in some respects.

The Teamsters Rail Conference looks forward to working with the Committee and any questions, I would be glad to answer. Thank you.

Mr. DEFAZIO. Thank you, Mr. Tolman.

Mr. Durbin?

Mr. Durbin. I will also try to be brief here. Again, as Mr. Hamburger said, we too are analyzing 1269 right now, and we look forward to getting back to the Committee with more detailed comments on the bill itself.

Again, I would just like to echo that we are happy to say there has been a long history of close cooperation on safety and security between the chemical industry, the labor unions and the rail industry.

But as a representative of the materials that are being transported, let me point out that the products that are supplied by the chemistry sector, including the hazardous chemicals, are essential to virtually every aspect of our lives. In fact, more than 96 percent of all manufactured goods are directly touched by chemistry, which is one of the reasons that DHS recognizes our industry as critical infrastructure. So the flawed view that chemicals are an unnecessary risk that need to be eliminated is thankfully being rejected.

Now Congress wisely established a comprehensive national regulatory system for hazardous materials transportation administered by DOT. The goal of that system is to ensure that chemicals and other hazardous materials are delivered safely, securely and reliably. The goal is not to prevent their movement. That is the appropriate focus. While DHS has been given an important role in trans-

portation security, it should continue to rely on the unmatched hazmat regulatory experience at DOT.

For ACC members, security was a priority well before the events of 9/11. Following the terror attacks, we went even further. We didn't wait for Government action but instead developed the Responsible Care Security Code which became mandatory for our members in 2002 and covers facilities, cyber systems and transportation, and our members have already invested over \$3.5 billion in that effort and certainly will continue to do so because we understand the stakes and our responsibilities.

Under the Code, the ACC and its members continue to work closely with the rail industry as well as with appropriate Government officials to develop more robust security operations. Among many other actions, our members efforts have included enhancing inspections and increasing surveillance along rail lines, and so far the partnership of the railroads has been strong and effective. In fact, we work together with the railroads on many issues. We share similar views with the proposed rulemaking underway at TSA and DOT and have long cooperated and invested in training systems and technology. We will continue to do. A superb example is the recently announced joint venture between Dow Chemical and Union Pacific to improve shipment visibility, tank car design and to reduce the rail time of hazmat shipments in high threat areas.

The fact is that we, that is, the chemical industry, the railroads and the Government, must continue to work together to protect these shipments and ensure their safety and security.

For ACC members, continuous improvement is part of Responsible Care. It is ACC's industry leading program and very much a part of the way we do business. Responsible Care requires us to look for new ways to enhance safety and security, whether the subject is new technology or new procedures and protocols. We are working cooperatively with the Federal Government, the railroads and tank car manufacturers as FRA develops a rulemaking for new rail tank car designs. Inputs to that process include industry efforts coordinated through the Next Generation of Rail Tank Car project and Government initiatives such as research coming from DOT's Volpe Center.

Emergency response is another critical component of hazardous materials transportation safety. I am pleased to say that again, this is another area where since the 1980s, we have worked with our member companies together with the railroads to put together TRANSCAER, a voluntary national outreach effort to help communities prepare for and respond to hazardous materials incidents.

In addition, ACC's CHEMTREC program, now in its 36th year, provides a successful blueprint for sharing expertise and experience with today's emergency responders. Located at our headquarters in Arlington, CHEMTREC is recognized by DOT and other agencies as a valuable source of information and expert counsel regarding hazmat incidents. I am proud to say CHEMTREC has been a behind the scenes partner to a variety of Government organizations and programs including NASA after the unfortunately Columbia Space Shuttle disaster and the U.S. Army in support of our troops in Afghanistan.

As a further improvement to CHEMTREC's capabilities, CSX Transportation and CHEMTREC launched a joint program to provide even more timely and useful information to emergency responders.

I want to personally invite the members of the Committee to tour our CHEMTREC facility in Rosslyn to see how we work with local responders and help protect your communities. So I will follow up with staff on that.

We look forward to working closely with the Committee, the Congress and Departments of Transportation and Homeland Security and other stakeholders to make this happen.

I will conclude my remarks.

Mr. DEFAZIO. Thank you.

We have about eight minutes left. There is, unfortunately, a very strict rule in the House that we can't meet during joint sessions, so I will defer to anybody on my side who has an urgent question.

Ms. BROWN. Thank you, Mr. Chairman. I will be very brief.

Mr. Tolman and Mr. Hamberger, and I will give you this in writing, but I want an extension on the whistleblowing protections. Why is it important, Mr. Hamberger? Whether you support it, Mr. Tolman.

I don't understand. I have talked to many men in the field, and they have a concern that if they report what they view as security breaches, they will be fired. I would like to hear some discussion, maybe briefly and then in writing.

In addition, Mr. Hamberger, would you also speak, and I will give it to you in writing, about security training. There is a concern from the people in the field that they have not gotten adequate training. You know it came up at our last hearing.

Thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentlewoman for being so succinct.

Mr. Shuster?

Mr. SHUSTER. Just a quick question to Mr. Hamberger and Mr. Tolman on the whistleblower protection, do you see that as something that should be at the Labor Department or do you want it part of the Rail Safety Act?

Mr. HAMBERGER. Well, as I indicated in my dash through my opening statement, Mr. Shuster, we believe——

Mr. SHUSTER. So fast I missed it.

Mr. HAMBERGER. Yes, sir. We believe that it would be more logical to have the current Federal rail safety whistleblowing system expanded to cover security rather than set up a parallel system at the Department of Labor. We are not covered by OSHA. We are covered by Federal Railroad Administration. So it just seems logical to keep it at the FRA.

Mr. SHUSTER. Mr. Tolman?

Mr. TOLMAN. Yes, I did read the language in Chairman Oberstar's bill, and I think that is exactly where it belongs.

Mr. SHUSTER. Thank you very much. I can tell, Mr. Tolman, you are not an attorney, and Mr. Hamberger is an attorney. The length of the answer was much different so thank you.

Mr. TOLMAN. I am just trying to be brief. He is trying to be long.

Mr. DEFAZIO. Mr. Duncan?

Mr. DUNCAN. Let me just say very quickly, Mr. Hamberger, I want to commend you on what your organization has done just voluntarily, and I hope that for all the organizations that have been testifying here today. Mr. Siano, for instance, testified that his members were scared. There is a Federal role but also I think as a good union, if their employees are scared, they would do some things on their own to help better serve their union members. I would say that to all the organizations here. There are certain things that you can and should be doing on your own.

We are going to submit our questions for the record.

Thank you very much.

Mr. DEFAZIO. I thank the Ranking Member.

Anybody else on the Democratic side, quick question?

Representative Napolitano?

Ms. NAPOLITANO. Not a question but rather a statement that I am hearing a lot of information that I didn't have before, and I am certainly aware that things have not been going too well in some areas insofar as the rail safety is concerned.

I am hoping that out of this we will be able to move forward, and I hate to call it a mandate but have Homeland Security and have the agencies work with the railroads, work with the communities to come up with the answers because it isn't one individual that needs to impose those requirements and regulations on the general public nor on the railroads nor on those that really have very little to do with it.

Thank you, sir.

Mr. DEFAZIO. Thank you.

Mr. Coble?

Mr. COBLE. Mr. Chairman, I will be very brief.

Mr. Hamberger, I know that AAR has helped developed railroad tank cars that are capable of withstanding derailment, collisions with highway vehicles and other severe impacts. I want to put a hypothetical to you. How would these cars, these tank cars react if a projectile did, in fact, strike the tank? Would it be a Hollywood style explosion or minor league? I know hypotheticals are difficult to answer sometimes.

Mr. HAMBERGER. I believe it would depend in the first case, of course, on what the projectile was and, secondly, what was the angle of the projectile coming in. It is possible, depending on the distance and the kind of projectile that it would, in fact, not penetrate. But let us be honest, there are projectiles out there that clearly would penetrate. If that were to occur, this material travels under pressure. It is liquid as it travels under pressure. When it released into the atmosphere—again, we are talking just those hundred thousand carloads of chlorine, anhydrous ammonia and others—it would then of course form a gas and plume which is toxic.

Mr. COBLE. I yield back, Mr. Chairman.

Mr. DEFAZIO. We have got about one minute left. Any other questions?

Okay, I want to thank the panel. Thank you for being succinct and delivering a lot of information.

Mr. HAMBERGER. Mr. Chairman, I think that Mr. Tolman would join me. The last time we testified here, we were admonished by

Chairwoman Brown and Mr. Shuster to go back and try to reach an agreement at the bargaining table. I am pleased to say that last week our organizations announced that they have reached a tentative agreement that will be going out for ratification over the next period of time. So I would just like to acknowledge the input from the Chairwoman and the Ranking Member.

Mr. DEFAZIO. She is a powerful chairperson. We all recognize that.

Mr. CUMMINGS. Mr. Chairman?

Mr. DEFAZIO. Yes.

Mr. CUMMINGS. When can we get a copy of that agreement, Mr. Chairman, do you think? I was just wondering. We hear about agreements in all these committees. I would like to see some of these agreements.

Mr. DEFAZIO. Does the panel have an answer?

Mr. TOLMAN. We have not even distributed it to our members yet. It is not even put together. But, Congressman, as soon as we get it, we will be glad to.

Mr. CUMMINGS. When do you anticipate that will be? The only reason I am asking is because we hear these things in other committees all the time, and I would just like to see some of this stuff.

Mr. TOLMAN. Right. The group that signed the agreement represents about 47 percent of rail labor. There is still another 53 percent of rail labor that has not signed an agreement, but within a week, I will give you a copy of that.

Mr. CUMMINGS. Thank you very much.

Mr. DEFAZIO. Okay, thank you.

Thank you, Mr. Cummings.

Again, I thank the panel members for their time and their testimony.

The Committee is now adjourned.

[Whereupon, at 11:00 a.m., the subcommittees were adjourned.]

Subcommittee on Highways and Transit
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Hearing on the "Transit and Rail Security"
Wednesday, March 7, 2007

Statement – Congressman Jason Altmire (PA-04)

Thank you, Chairman DeFazio and Chairwoman Brown for holding this joint hearing today on transit and rail security. I appreciate your attention to this issue and for providing us with the opportunity to examine the state of preparedness of our nation's transit, rail, and highways.

In reviewing today's prepared testimony, I was alarmed to learn that a comprehensive risk assessment of the nation's passenger rail system has yet to be completed by the Transportation Security Administration. Clearly, there are a number of challenges in properly conducting an assessment of the passenger rail system, as well as how to effectively coordinate the multiple jurisdictions and stakeholders involved, but the onus is on us to protect the American people.

Recent terrorist attacks on international mass transit systems in Madrid, Spain; London, England; Mumbai, India; and Panipath, Pakistan show us the consequence of inaction. From 1991 to 2001, 42 percent of all terrorist incidents were carried out on trains and buses. There are vulnerabilities here at home and a proper evaluation of the nation's infrastructure will allow the Department of Homeland Security and Congress to prioritize security investments.

I am glad we have numerous leaders here today to talk in greater detail about the security needs of the country and I hope their expertise will provide the Committee with guidance on how to appropriately secure the nation's transit, rail, and highway systems.

Thank you again, Mr. Chairman and Madam Chairwoman. I yield back the balance of my time.

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**Statement of
The Honorable Corrine Brown
Chairwoman
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Joint Hearing on Rail & Transit Security
Wednesday, March 7, 2007**

I want to thank Chairman DeFazio for joining me in holding this hearing on an issue that hasn't gotten the attention it needs and deserves.

This Sunday will mark the third anniversary of the train bombings in Madrid, and we have seen terrorist attacks in London and India in each year since. Yet the Bush Administration has done little to protect our Nation's freight rail and public transportation systems and its millions of passengers.

The anniversary of this terrible tragedy again raises the serious question of whether we are prepared in

this country for a similar attack. Sadly, that answer is a resounding NO.

The Federal Government has focused most of its attention on enhancing security in the airline industry and has largely ignored the needs of public transit agencies and railroads. Yet, worldwide, more terrorist attacks have occurred on transit and rail systems since 9/11 than on airlines.

In 2006, we dedicated \$4.7 billion to the airline industry for security, while 6,000 public transit agencies and one national passenger railroad, Amtrak, had to share a meager \$136 million total for security upgrades. Nothing was provided to the 532 freight railroads for security upgrades.

Fortunately for the traveling public, the legislation that I introduced with Chairman Oberstar and Chairman DeFazio will address the security challenges facing our Nation's transit and rail systems.

Our bill requires comprehensive security plans; strengthens whistleblower protections for workers; mandates security training; improves communication and intelligence sharing; authorizes a higher-level of grant funding for Amtrak, the freight railroads, and public transportation providers; and provides funding for life-safety improvements to the tunnels in New York, Boston, and Washington, D.C.

Most importantly, it helps make sure our communities, our First Responders, and our transit

and rail workers are safe and secure. And it does all of this through a coordinated effort between the Department of Homeland Security and the Department of Transportation, the agency that has the expertise to deal with transportation safety issues.

We are way behind many other countries in protecting our transit and rail systems, but with the new leadership in Congress we have a plan that will protect millions of transit and rail passengers and the communities through which freight railroads operate from harm, while keeping the trains running on time.

OPENING STATEMENT OF REP. STEVE COHEN

Transportation and Infrastructure Subcommittees on Highways and Transit, Railroads,
Pipelines and Hazardous Materials

“Transit and Rail Security”

March 7, 2007

In the wake of Sept. 11, 2001, transportation security has taken center stage as one of the most important and defining issues of the early 21st Century.

Addressing our transit security needs covers a wide array of topics from improving the safety of freight rail transport of Toxic Inhalation Hazardous Materials to addressing the security and safety needs of passengers by land, water and air. Certainly one of the most prominent issues in transit safety to be considered today concerns the protection of our railways and highways from an act of terrorism.

Our constituents and community leaders across the country are counting on the federal government to lead the effort in continuing to improve the safety of our transit and rail systems. I look forward to the testimony that will be received today from leaders and experts on these issues and hope this hearing will provide guidance toward the development of innovative solutions to our safety and security needs.

**Statement by Congressman Jerry F. Costello
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials and the
Subcommittee on Highways and Transit
Hearing on Transit and Rail Security
March 7, 2007**

Mr. Chairman and Madame Chairwoman, thank you for calling today's hearing on transit and rail security. I would like to welcome today's witnesses.

Throughout the world, rail and transit continue to be targets of terrorist attacks. Violent acts of terror using commuter trains or other forms of rail and transit during peak travel times are despicable and should serve as a wake-up call to everyone -- we must do more to guard against a terrorist attack on our mass transit systems here in the US. After London, Madrid, and Mumbai, any one of America's cities could be next on the terrorists' target list and we must put the focus and resources into protecting critical passenger rail and transit systems.

Like air transportation, rail and bus transportation have unique features making it inherently vulnerable to attacks. Rail and bus passenger facilities rely on open architecture and easy movement of passengers in and out of facilities. In addition, freight and passenger rail systems as well as bus

systems traverse dense urban areas that offer multiple attack points and easy escape as well as vast rural areas that are difficult to patrol and secure. It is because of these inherent vulnerabilities, I was pleased to see Chairpersons Oberstar, DeFazio, and Brown introduced HR 1269, the Rail and Public Transportation Security Act of 2007, which seeks to maximize the expertise of both DHS and DOT to enhance and expedite the implementation of critically important security programs. I am interested in hearing comments from our witnesses on the legislation.

Finally, there remain many issues associated with rail hazmat transportation security. I am interested in hearing from our witnesses whether current federal policies, regulations, and grants could more effectively promote rail hazmat transportation security at reasonable costs. Further, the debate of routing hazmat through urban centers persists with pros and cons of rerouting high hazard shipments. I would ask that our witnesses comment on that as well.

Again, thank you Mr. Chairman and Madame Chairwoman for calling today's hearing.

**Congresswoman Juanita Millender-McDonald
Statement at Joint Hearing for the Subcommittee on
Highways and Transit and the Subcommittee on
Railroads, Pipelines and Hazardous Materials
“Transit and Rail Security”
Wednesday, March 7, 2007
2167 Rayburn House Office Building-10:00 A.M.**

Mr. Chairman, I want to thank you for calling this hearing. There is perhaps no more critical topic for this Committee to explore than how to create a safer transportation system for Americans.

As my colleagues know, I proudly represent California's 37th District, which contains a unique collection of cities and some of our nation's most critical transportation infrastructure. Millions of Americans rely on

the public transit systems in Los Angeles and Long Beach for their daily commute and hundreds of millions of Americans rely on the steady stream of commerce that stems from the Ports of Long Beach and Los Angeles on the I-710 for the things they buy everyday. You can therefore see that in my District alone, highway and rail security safeguards millions of lives and billions of dollars.

For this reason, I am a strong supporter of enhancing highway security as it relates to truck inspection facilities located on trade corridors. Highways of National Significance are natural targets and I will continue my fight to protect these economically vital roadways. It is about securing the entire supply chain.

Looking at the bigger picture, the economic impact on a series of terrorist attacks on bus and rail targets is likely too great to be accurately calculated. Because so much is at stake, I am pleased to see that this Committee, under the leadership of Chairman Oberstar, has wasted no time in tackling this issue. H.R. 1269 is a collection of coordination and authorization that will point us in the right direction. Specifically, I am pleased to see an increase in the number of rail security inspectors within DHS, a strong focus on coordination between the vast myriad of transportation stakeholders, and the inclusion of billions of dollars in federal transportation security grants for rail, bus and public transit systems.

I wish to thank each of the panelists for joining us today and I look forward to hearing their testimony.

Thank you Mr. Chairman.

**The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on Transit and Rail Security
Wednesday, March 7, 2007**

I want to commend Chairman DeFazio and Chairwoman Brown for scheduling today's hearing on strengthening the security of railroad, public transportation, and over-the-road bus systems in the United States. Strengthening and enhancing the safety and security of these vital transportation networks is an urgent and critical need.

Transit and rail systems have long been popular targets of terrorist attacks worldwide. From 1991 to 2001, 42 percent of all terrorist incidents were carried out on rail systems or buses. Recent tragic events show that these threats continue.

Three years ago, this week, on March 11, 2004, a coordinated terrorist attack against the commuter train system of Madrid, Spain, killed 191 people and wounded more than 2,000 others. On July 7, 2005, four bombs exploded on the London transit system, killing 52 people and injuring 700 others. It was the deadliest bombing in London since World War II. On July 11, 2006, a series of seven bomb blasts that took place over a period of 11 minutes on the Suburban Railway in Mumbai, India's

financial capital, killed 209 people and injured over 700 others. On February 19, 2007, 66 persons were killed and 13 others were injured when explosive devices caused two cars of the Pakistan bound Attari Express to catch fire near Panipath in India.

The characteristics of transit and passenger rail systems make them inherently vulnerable to terrorist attacks and difficult to secure. Public transportation and rail systems are open, have multiple access points, are hubs serving multiple carriers, and in some cases, have no barriers. In addition, high volume of passengers and freight, expensive infrastructure, economic importance, and location make these systems attractive targets for terrorists because of the potential for mass casualties, economic damage, and disruption.

The potential to do harm is truly enormous. In the United States, every day, more than 14 million people use public transportation. Public transportation agencies provide 9.5 billion transit trips annually. The over-the-road bus industry, which provides intercity bus service and charter service, transports 774 million passengers annually. Amtrak serves more than 25 million passengers annually.

Unfortunately, despite this stark reality, investments to enhance the security of our nation's surface transportation systems have not kept pace with the needs. Last year, the Federal Government invested \$4.7 billion in aviation security improvements, while spending only \$136 million on transit and rail security, even though five times as many people take trains as planes every day.

Last week, I introduced legislation with Chairman DeFazio and Chairwoman Brown that will address the security challenges facing our Nation's railroads, public transportation agencies, and over-the-road bus operators. H.R. 1269 will enhance safety and security of these systems by providing the resources and the tools to prevent and mitigate the consequences of a terrorist attack.

This bill carefully crafts a joint approach on security. The bill maximizes the expertise and core competencies of both DHS and DOT, to enhance the implementation of these critically important, and long overdue, security programs.

DOT has played and continues to play a significant role in securing our nation's transit and rail systems. DOT is the government's lead agency on transportation safety and efficiency. Decisions on security measures cannot be made in a vacuum without consideration of the effects on safety and efficiency. While DHS

is the lead agency on security, it must work cooperatively with DOT to ensure that safety is not impaired and security measures do not unnecessarily impair efficiency.

The Federal Transit Administration, the Federal Railroad Administration, and the Pipeline and Hazardous Materials Safety Administration have all signed Memorandums of Understanding with DHS to clarify the roles and responsibilities of each agency with respect to security. This bill honors and follows the principles outlined in these existing agreements.

To enhance the safety and security of these networks, H.R. 1269:

- Directs the Secretary of Homeland Security, in coordination with the Secretary of Transportation, to develop and implement a National Rail and Public Transportation Security Plan, as required in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), but which has not been completed.
- Requires the Department of Homeland Security (DHS), in coordination with the Department of Transportation (DOT) to issue regulations establishing a security program for rail carriers, public transportation providers, and over-the-road bus operators. Carriers and operators considered to be at high or medium risk of terrorist attack, as determined by DHS, will be required to conduct an

assessment of the vulnerability of their infrastructure and operations to terrorism and to prepare and implement a security plan.

- Requires DHS, in coordination with DOT, to establish separate security assistance grant programs for rail, transit, and over-the-road bus, to provide capital and operating assistance based on priorities established by the security assessments.
- Authorizes specific grants to Amtrak for tunnel improvements and upgrades, and further requires an increase in the number of DHS rail security inspectors.
- Addresses a critical security gap by requiring mandatory security training to insure that transit and rail employees are properly trained to address security needs.
- Establishes strong whistleblower protections for employees of railroads, public transportation agencies, and over-the-road bus companies; as well employees of DOT, DHS, and private contractors.

The incapacity or destruction of the nation's transportation systems and assets would have a debilitating impact on our security, economic stability, and quality of life. H.R. 1269 will provide the agencies and operators of these systems with the means to protect these vital networks.

I look forward to hearing from the witnesses this morning. Their testimony will allow the Committee to establish a record for advancing this badly needed legislation, which is designed to improve the safety and security of the nation's transit and rail systems.



Statement by Rep. Ellen Tauscher
 Wednesday, March 7, 2007
 T&I Subcommittees on Highway and Transit & Railroads, Pipelines and Hazardous
 Materials Joint Hearing

Mr. Chairman, thank you for allowing me the time to speak on this issue. As you have said, and as today's witnesses will testify there is a drastic need for improvement in national transit security.

Recent reports that al-Qaeda operatives had planned to attack New York City's subway system and the recent attack in India are a reminder of a troubling reality – that our public transit systems are attractive and vulnerable targets to terrorists.

And while transit agencies across the nation have been working diligently to improve security, they have been hampered by the lack of available federal funds.

Since 2001, the federal government has only provided \$387 million dollars in direct transit security spending and an additional \$175 million will be available for fiscal year 2007.

Contrast this with the estimated \$250 million dollars needed by San Francisco's BART system alone, and the estimated \$6 billion dollars needed by the 6,000 public transportation agencies which are used by 800 million Americans annually, it is clear that more needs to be done.

This lack of reliable and robust security funding has forced these public transit agencies to look for other sources of funding. For many of them, this means seeking funds through the Department of Homeland Security's Urban Area Security Initiative (UASI). In doing so, they are forced to compete for funds along side law enforcement agencies and cities, through the UASI process.

I believe all my Colleagues would agree that this process leaves little hope for transit agencies that are attempting to meet urgent security needs and puts our nation's regions in the untenable position of choosing between the security needs of the transit systems under their jurisdiction and those needs of law enforcement and fire agencies in their regions.

There is no denying that the DHS's process for distributing these grants is fundamentally flawed. I have long advocated for a process which is consistent from year to year, which is robustly funded, and which uses risk, threat and consequence as the greatest determinant in how allocations are made. Unfortunately, the Administration has not provided such a program at the detriment to the agencies which we all wish to protect.

I am unsure that the new National Protection and Programs Directorate office at DHS that the President proposed in his 2008 budget request to handle infrastructure security will be able to effectively reform this system. A solution to the problem will not come from

moving deck chairs on the ship. Instead, the Administration must make a fundamental commitment to ensuring the hardening of all our nation's critical assets and that includes our most vulnerable transit systems.

I applaud the Chairman of the full Committee for his work in introducing legislation which would increase federal grant funding to \$600 million annually for fiscal years 2008 through 2011. This bill would finally provide the needed investment for transit security and look forward to this Committee and the Homeland Security Committee, working together to finally address what the last Congress failed to do.

As I have said often, it is time to stop only responding to the last threat. It is past time that transportation authorities, the DOT, DHS, FRA and Congress work together to develop a plan which will protect our national transportation infrastructure.



Testimony of
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Before the
 Subcommittee on Highways and Transit, and
 Subcommittee on Railroads, Pipelines and Hazardous Materials
 of the
 House Committee on Transportation and Infrastructure

"Transit and Rail Security"

March 7, 2007



1300 Wilson Boulevard, Arlington, VA 22209 ♦ Tel 703-741-5000 ♦ Fax 703-741-6000 ♦ <http://www.americanchemistry.com>

Chairmen and members of the two subcommittees, thank you for calling today's hearing on a subject of great importance both to the chemistry sector I represent and the nation at large. And thank you too for this opportunity to share our sector's views with you.

I am Marty Durbin, Managing Director of Federal Affairs with the American Chemistry Council ("ACC"). ACC is the trade association representing the companies that make the chemicals that make modern life possible. Today, I will discuss the importance of safely and securely shipping chemicals by rail, including hazardous materials, and how we can work together to continuously improve our current system.

Products supplied by the chemistry sector are essential to manufacturing agriculture, energy, transportation, technology, communications, health, defense, and virtually every aspect of our lives. Chemicals are also essential for thousands of products that improve the quality of our lives including solar panels, bullet resistant material, airbags for automobiles, sunscreen, pharmaceuticals, and disinfectants.

Our \$635 billion dollar industry directly employs nearly one million people in all 50 states, supports an additional four million jobs around the country and accounts for 10 percent of all U.S. merchandise exports. In fact, more than 96% of all manufactured goods are directly touched by chemistry. That's why the Department of Homeland Security recognizes our industry as critical infrastructure, a national asset that warrants protection. The simplistic view that chemicals are unnecessary risks that need to be eliminated is thankfully being rejected by thoughtful policymakers.

As Secretary Chertoff points out, while a vast majority of chemical shipments do not present a security risk to the nation, we must focus on protecting the small percentage that do.

Today, under the U.S. Department of Transportation, we have a very safe freight rail system. Should rail transportation be disrupted, shippers would have to consider

alternative modes of transportation such as additional trucks on already congested highways and resulting in added air pollution. It is estimated that the movement of one 30,000-gallon rail tank car is equivalent to six tanker trucks. More moving pieces would require the need for added safety and security measures, while creating environmental challenges.

Congress many years ago wisely established a comprehensive, national regulatory system for hazardous material transportation, which is administered by the DOT. The goal of that system is to ensure that chemicals and other hazardous materials are delivered safely, securely and reliably. The goal is not to prevent their movement.

While DHS has an important role in transportation security, it's critical that DHS rely on the unmatched hazmat regulatory experience at DOT.

Today, I wish to deliver several key messages, which reflect long-standing and well-documented core values for ACC members. For the chemical sector, safety and security are the starting point *and* the finish line. That's where we begin and where we want to wind up in our manufacturing operations, our transportation systems, our entire value chain. This important commitment is well-documented, and as I will note, we "walk the walk" on safety and security. We do so through our industry leading Responsible Care® management system that includes both safety and security, and through innovative programs that are addressing such critical issues as chemical tank car design and the real-time tracking of chemical shipments.

We are neither complacent nor willing to stand still on transportation security. We are working closely with both DOT and DHS on the development of new rail security regulations and I will discuss several ongoing security programs, including joint efforts with our rail partners, that demonstrate we are "walking the walk" to continually improve rail safety and security.

We will continue to be a valued resource and partner to our carriers and to government at every level. I will share with you some of the activities of our CHEMTREC® 24/7 emergency hotline and the work we do with our rail partners through TRANSCAER®, an education and outreach program for emergency responders.

ACC's Commitment to Safety and Security

Safety and security – for our communities, workforce, facilities and products is a longstanding and deeply felt commitment for the members of the ACC. According to the U.S. Department of Labor, our industry is the safest manufacturing sector in the U.S. Stephen Flynn, former homeland security advisor for the U.S. Commission on National Security and retired Coast Guard officer, acknowledged our safety record in a recent interview when he said “...the chemical industry has a very good track record on safety and surprisingly, given what they work with on any given day, very few accidents given the scale of what we use.”(NPR's *To the Point*, 22 Feb 07)

Security has always been a priority for our members, going back well before the events of 9/11. Following the terror attacks, we did not wait for government action but instead developed the Responsible Care® Security Code which became mandatory in 2002 and covers facilities, cyber and information security and transportation.

The Code explicitly requires every ACC member facility to assess and prioritize its vulnerabilities, implement security measures, and verify implementation through third-parties such as local emergency responders. Our members already have invested more than \$3.5 billion in this effort, and we will continue to invest in security because we understand the stakes and our responsibilities.

Over the last four years, we helped lead the charge for effective federal legislation to ensure that all chemical facilities meet crucial security standards. The law that Congress passed last October authorized the Department of Homeland Security to issue new regulations, and we have participated in that rulemaking process. DHS will announce its final rule on April 4, and we hope many of the building blocks developed under the Responsible Care Security Code will be reflected in that rulemaking. This would not be

the first time our Code was incorporated into legislative or regulatory language. For example, the Code was recognized by the U.S. Coast Guard as an Alternative Security Plan for complying with the highly-acclaimed Maritime Transportation Security Act.

Under the Code, ACC and its members work closely with the marine, trucking and rail industries, as well as the appropriate federal, state and local officials, to develop more robust security operations. Our transportation efforts include:

- Implementing new protocols and procedures
- Enhancing inspections
- Increasing surveillance along roads, waterways and rail lines
- Screening employees
- Restricting access to facilities
- Conducting security audits
- Using tamper resistant seals, packaging and shipping devices

Naturally, we protect the distribution process within our facilities where rail cars are both loaded and unloaded, and we continue to work with our rail partners to enhance the security of our products throughout the rail transportation system.

In fact, a GAO report in 2003 took note of industry progress, saying “The railroad and chemical industries have taken a number of steps to enhance the security of transportation of hazardous materials.”

Continuous Improvement

For ACC members, continuous improvement is part of Responsible Care, and very much a part of the way we do business. It requires us to look for new ways to enhance safety and security, whether the subject is new technology or new procedures and protocols.

I am pleased to say that we are working cooperatively with the federal government, the railroads and tank car manufacturers as the FRA develops a rulemaking for a new rail tank car design. Inputs to this process will include industry efforts coordinated through the Next Generation Rail Tank Car Project and government initiatives such as the research on tank car crash forces being conducted by DOT’s Volpe National Transportation Systems Center.

Of course, walking the walk means more than supporting appropriate government initiatives. An example of a forward-looking effort is an initiative underway by The Dow Chemical Company to increase safety and security across its supply chain. Specific actions include increased outreach and training for emergency responders along hazmat routes, improved shipment visibility and new supply chain design.

ACC – America's Chemical Resource and Partner

ACC and our member companies are proud to be both resources and partners to our communities, the railroads, local jurisdictions and the emergency response community. In the 1980s, ACC members, the railroads and other stakeholders developed TRANSCAER® (**T**ransportation **C**ommunity **A**wareness **E**mergency **R**esponse), a voluntary national outreach effort that helps communities prepare for and respond to possible hazardous material transportation incidents.

TRANSCAER "sponsor" organizations provide monetary resources and in-kind contributions. TRANSCAER Sponsors and Partners include: American Chemistry Council, Association of American Railroads, Chemical Educational Foundation, CHEMTREC®, National Tank Truck Carriers, Inc. and The Chlorine Institute. The U.S. Department of Energy, Environmental Management Office of Transportation is a TRANSCAER Partner. In 2005, TRANSCAER held over 200 events across the nation reaching over 8,500 attendees.

Emergency response is one of the most critical components of hazardous material transportation safety and security. Swift and appropriate response to accidents or other incidents will save lives not only of the public but of the responders themselves.

ACC's CHEMTREC (**C**hemical **T**ransportation **E**mergency **C**enter) program, now in its 35th year, provides a successful blueprint for sharing expertise and experience with today's emergency responders. Located at our headquarters in Arlington, CHEMTREC is recognized by DOT and other federal agencies as a valuable source of information and expert counsel regarding hazardous materials incidents. When a chemical incident takes place, responders contact CHEMTREC immediately to determine the best way to handle a wide range of hazardous substances including radioactive materials, infectious substances, biohazards, and hazardous waste. Our state-of-the-art emergency center is a 24/7 reminder of the commitment we make to enhance the safety of every hazardous material shipment, and the people whom it may affect.

I am pleased to report that CHEMTREC has been a behind-the-scenes partner to a variety of government organizations and programs including NASA and the U.S. Army. When chemical spills, leaks or other incidents are involved, CHEMTREC usually gets the call and links the responders with the experts who can help them contain, control and clean-up.

As a further improvement to CHEMTREC's capabilities, CSX Transportation and CHEMTREC have launched a program designed to provide even more information to emergency responders during a rail-related hazardous materials incident. The program provides CHEMTREC's staff of Emergency Service Specialists with direct access to CSXT's Network Operations Workstation (NOW). NOW is a secure system that uses a combination of technologies to graphically identify the location of a train anywhere on CSXT's 21,000- mile network. These tools provide CHEMTREC's staff with a web-based, visual display of the train and its location, the location of rail cars within the train, and the contents of each rail car.

I want to personally invite the members of the subcommittees – and staff – to tour our CHEMTREC Emergency Center in Rosslyn to see how we work with local responders to help protect your communities. I will follow up with the staff director to determine an appropriate time for such a tour and discussion.

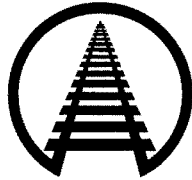
Summary

The nation needs a safe, secure and reliable system of hazardous material rail transportation, governed by uniform, national rules. That is the system we have today, and the challenge – for both the private and public sectors – is to ensure that this system continuously improves.

We look forward to working closely with the subcommittees, the Congress, the Departments of Transportation and Homeland Security and the other stakeholders to make this happen.

Thank you and I would be glad to answer any questions.

STATEMENT OF
EDWARD R. HAMBERGER
PRESIDENT & CHIEF EXECUTIVE OFFICER
ASSOCIATION OF AMERICAN RAILROADS



BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
and
SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS
HEARING ON TRANSIT AND RAIL SECURITY

MARCH 7, 2007

Association of American Railroads
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On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to discuss freight railroad security. Members of the AAR account for the vast majority of railroad mileage, employees, and revenue in Canada, Mexico, and the United States.

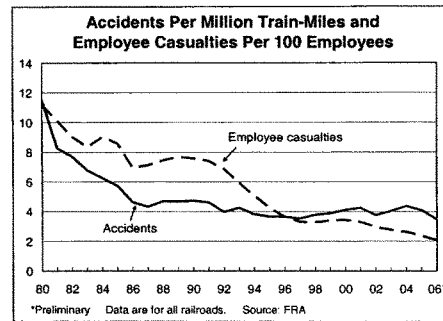
Unlike U.S. passenger railroads and transit systems, U.S. freight railroads are, with minor exceptions, privately owned and operated, and they rely almost exclusively on their own earnings to fund their operations. Freight railroads are critical to our economic health and global competitiveness. They move approximately 40 percent of our nation's freight (measured in ton-miles) — everything from lumber to vegetables, coal to orange juice, grain to automobiles, and chemicals to scrap iron — and connect businesses with each other across the country and with markets overseas.

From 1980 through 2006, Class I railroads spent more than \$370 billion — more than 40 cents out of every revenue dollar — on capital expenditures and maintenance expenses related to infrastructure and equipment. Non-Class I carriers had billions of dollars of additional spending. These massive, privately-funded expenditures help ensure that railroads can meet our current and future freight transportation demands safely and cost effectively.

As the Federal Railroad Administration (FRA) noted in congressional testimony just a few weeks ago, “The railroads have an outstanding record in moving all goods safely.” Indeed, nothing is more important for railroads than the safety and security of their operations. For railroads, safety and security are interconnected: a safer workplace will tend to be a more secure workplace, and a more secure workplace will tend to be a safer workplace. And railroads have become much safer. According to FRA data, railroads reduced their overall train accident rate by 70 percent from 1980-2006, and their rate of employee casualties

by 81 percent. Railroads have lower employee injury rates than other modes of transportation and most other major industry groups, including agriculture, construction, manufacturing, and private industry as a whole.

We should also be encouraged by the continuing improvements in rail safety. Based on preliminary data, 2006 was the safest year ever for railroads by the three most commonly-cited rail safety measures: the train accident rate, the employee



casualty rate, and the grade crossing collision rate all reached record lows.

Freight railroads are justifiably proud of these accomplishments. At the same time, though, railroads want rail safety and security to continue to improve, and they are always willing to work cooperatively with members of this committee, others in Congress, the Department of Homeland Security (DHS), the FRA, rail employees, and others to find practical, effective ways to make this happen.

Below I will discuss the many ways that U.S. freight railroads have addressed security in the post 9-11 era and how security efforts (including hazmat security) can be improved.

The Aftermath of September 11

Almost immediately after the 9/11 attacks, the AAR Board of Directors established a Railroad Security Task Force. The overarching goals of this task force were to 1) help ensure the safety of rail employees and the communities in which railroads operate; 2) protect the viability of national and regional economic activity; and 3) make certain that railroads can continue to play their vital role in support of our military.

Over the next several months, the task force conducted a comprehensive risk analysis of the freight rail industry. Using CIA and national intelligence community “best practices,” five critical action teams (consisting of more than 150 experienced railroad, customer, and intelligence personnel) examined and prioritized railroad assets, vulnerabilities, and threats. Critical action teams covered information technology and communications; physical infrastructure; operational security; hazardous materials; and military traffic needs. Freight railroads also cooperated fully with a separate team covering passenger rail security.

The Railroad Terrorism Risk Analysis and Security Management Plan

The end result of these analyses was the creation of the industry’s Terrorism Risk Analysis and Security Management Plan, a comprehensive, intelligence-driven, priority-based blueprint of actions designed to enhance freight rail security. The plan was adopted by the AAR in December 2001 and remains in effect today.

As a result of the plan, freight railroads quickly enacted more than 50 permanent security-enhancing countermeasures. For example, access to key rail facilities and information has been restricted, and cyber-security procedures and techniques have been strengthened. In addition, the plan defines four progressively-higher security alert levels and details a series of actions to be taken at each level:

Alert Level 1 is “New Normal Day-to-Day Operations” and exists when a general threat of possible terrorist activity exists, but warrants only a routine security posture. Actions in effect at this level include conducting security training and awareness activities; restricting certain information to a need-to-know basis; restricting the ability of unauthorized persons to trace certain sensitive materials; and periodically testing that security systems are working as intended.

Alert Level 2 (the level in effect today) is “Heightened Security Awareness.” It applies when there is a general non-specific threat of possible terrorist activity involving railroad personnel and facilities. Additional actions in effect at this level include security and awareness briefings as part of daily job briefings; content inspections of cars and containers for cause; and spot content inspections of motor vehicles on railroad property.

Alert Level 3 means there is “a credible threat of an attack on the United States or railroad industry.” Examples of Level 3 actions include further restricting physical access and increasing security vigilance at control centers, communications hubs, and other designated facilities, and requesting National Guard security for critical assets.

Alert Level 4 applies when a confirmed threat against the rail industry exists, an attack against a railroad has occurred, an attack in the United States causing mass casualties has occurred, or other imminent actions create grave concerns about the safety of rail operations. Security actions taken at this level include stopping non-mission-essential contractor services with access to critical facilities and systems; increasing vigilance and scrutiny of railcars and equipment during mechanical inspections to look for unusual items; and continuous guard presence at designated facilities and structures.

Alert Levels 3 and 4 can be declared industry-wide for a short period of time or, if intelligence has identified that terrorist action against a specific location or operation is imminent, for a particular geographic area (*e.g.*, the Midwest) or subset of rail traffic (*e.g.*, hazardous materials).

The rail security plan is not simply something that has been put in a binder on a shelf to be taken down and dusted off once in a while. Rather, it is a robust and dynamic paradigm for railroad operations that has been in effect for more than five years; it is evaluated and

modified, as necessary, on an ongoing basis; and it has substantially raised the baseline of railroad security. Railroads took this action without waiting for legislation or a regulatory regime to tell them to do so.

Indeed, railroads are a model for other industries in their approach to improving security. As a former FRA administrator noted regarding rail efforts at enhancing security, “I can say how impressed I am by the scope of the analysis, the sophistication of the analytical framework, and the manner in which rail carriers have devoted substantial resources – both funding and senior leadership – to the completion of this important task. They’ve done remarkable work.” And a former secretary of the U.S. Department of Health and Human Services has noted that “The anti-terrorist measures the railway industry has taken...have added and will continue to add to the safety of our citizens, the delivery of vital goods and the ability of our men and women in uniform to carry our battle to the enemy.”

Access to pertinent intelligence information is a critical element of the railroad security plan. Congress should ensure that DHS is routinely communicating relevant intelligence to the railroad industry through the Railway Alert Network (RAN), a secure 24/7 communications network operated by the AAR at the Secret level that links federal security personnel with railroad operations centers. Through the RAN, railroads and the intelligence community can share information to maintain situational awareness and immediately institute appropriate alert levels.

Railroad industry security requires constant communication with the Transportation Security Administration (TSA) and elsewhere within DHS, the Department of Defense (DOD), the Department of Transportation (DOT), the FBI’s National Joint Terrorism Task Force (NJTTF), state and local law enforcement, and others. A railroad police officer and

railroad analysts who hold Top Secret clearances work with government intelligence analysts at NJTTF and at DHS to help evaluate intelligence and serve as subject matter experts.

Communication is also enhanced by the Surface Transportation Information Sharing and Analysis Center (ST-ISAC), which was established by the AAR at the request of the DOT. The ST-ISAC collects, analyzes, and distributes security information from worldwide resources to help protect vital information technology systems and physical assets from attack. It operates 24/7 at the Top Secret level.

Rail security efforts strongly benefit from the fact that major railroads have their own police forces. Safety and security would be enhanced if police officers of one railroad were permitted to exercise law enforcement powers on the property of another railroad. This flexibility could prove especially valuable in the event of a national security threat involving an individual railroad.¹

Notwithstanding rail industry efforts, there can be no 100 percent guarantee against terrorist assaults, including assaults involving hazardous materials (hazmat) on railroads. If such an incident occurs, railroads have well-established programs and procedures that would be invoked that are designed to respond to and minimize the impact of such incidents.

In this regard, emergency response efforts are critical. Railroads help communities develop and evaluate hazmat emergency response plans. Through their own efforts and the Transportation Community Awareness and Emergency Response Program (TRANSCAER), they provide basic training for more than 20,000 emergency responders each year.

¹ Such a measure is contained in legislation (H.R. 2351) introduced in the 109th Congress sponsored by Rep. James Oberstar, chairman of the House Transportation and Infrastructure Committee, and is included in S. 184 (the "Surface Transportation and Rail Security Act of 2007"), which is now included in S. 4 (the "Improving America's Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007").

In addition, more than 20 years ago, the AAR established the Emergency Response Training Center (ERTC), a world-class training facility that is part of the Transportation Technology Center, Inc. (TTCI) in Pueblo, Colorado. The ERTC has provided in-depth hazmat emergency response training to more than 38,000 emergency responders and railroad and chemical industry professionals from all over the country and abroad. The ERTC is providing basic railroad safety and security training for 100 rail security inspectors hired by the TSA, and this summer ERTC will be training NJTTF personnel.

The ERTC is considered by many to be the “graduate school” of hazmat training because of its focus on comprehensive, hands-on training using actual rail equipment. TTCI boasts a collection of around 70 rail freight cars (including tank cars), some 15 rail passenger cars, 25 highway cargo tanks, van trailers, and intermodal containers, as well as computer work stations equipped with the latest emergency response software. TTCI is currently developing a Passenger Railcar Security and Integrity Training Facility to test the effectiveness of various response and remediation techniques in mitigating incidents involving passenger trains. This facility focuses on chemical, biological, radiological, nuclear, or explosive incidents and other activities associated with potential terrorist events.

The AAR strongly supports legislation that would make TTCI a member of the National Domestic Preparedness Consortium (NDPC), a group of premier institutions that develop, test, and deliver training to state and local emergency responders. Today, a facility specifically targeted at emergency response training for freight and passenger railroad environments is notably absent from the NDPC. Including TTCI in the NDPC offers a unique opportunity to improve our nation’s ability to prevent, minimize, and respond to potential rail-related terrorist attacks.

The rail industry is pleased that many members of this committee have visited TPCI. I again extend an open invitation to every member of this committee to visit the facility to gain first-hand knowledge of its capabilities. On April 11, 2007, we plan to conduct a tank car test crash as part of an evaluation of tank car safety. This committee might want to consider scheduling a field visit to TPCI to view this demonstration.

Hazardous Materials Movements by Rail

Each year, 1.7 to 1.8 million carloads of hazardous materials are transported by rail in the United States, with two-thirds moving in tank cars. "Toxic inhalation hazards" (TIH) — gases or liquids, such as chlorine and anhydrous ammonia, that are especially hazardous if released — are a subset of hazardous materials and are a major (though not exclusive) focus of hazmat-related rail safety efforts. In each of the past couple of years, railroads have transported just over 100,000 carloads of TIH, virtually all in tank cars.

Railroads recognize and deeply regret the occurrence of a few tragic accidents involving hazardous materials over the past couple of years. Nevertheless, the rail hazmat safety record is extremely favorable. In 2005, 99.997 percent of rail hazmat shipments reached their final destination without a release caused by an accident. Railroads reduced hazmat accident rates by 86 percent from 1980 through 2005.

Still, no one disputes that efforts should be made to increase hazmat safety and security where practical. Railroads understand this better than anyone. Today, the federal government, through the railroads' common carrier obligation, requires railroads to transport highly-hazardous materials, whether railroads want to or not. Unlike firms in other industries, including other transportation companies, railroads today have not been able to "just say no" to entering into a business relationship with consumers or manufacturers of these materials.

Absent railroads' common carrier requirement, many railroads would not transport these materials because of the potentially ruinous claims that could arise in the event of a catastrophic accident involving a release of these materials. Indeed, while accidents involving highly-hazardous materials on railroads are exceedingly rare, history demonstrates that railroads can suffer multi-billion dollar judgments, even for accidents where no one gets hurt and the railroads do nothing wrong. Drunk drivers, impatient motorists driving around a grade crossing gate or ignoring a signal at a grade crossing, faulty repairs by the owner of a tank car, and pranksters — not terrorists — have caused incidents that could have been disastrous if they had involved the release of these materials.

A few years ago in New Orleans, a tank car that railroads did not own containing more than 30,000 gallons of liquid butadiene began to leak. Vapor from the butadiene tank car rolled out across a neighborhood until the pilot light of an outdoor gas water heater ignited it. More than 900 people were evacuated. The National Transportation Safety Board found that the probable cause of the accident was an improper gasket that a chemical company had installed on the tank car. Nevertheless, a state court jury entered a punitive damages verdict against the railroads involved in the amount of \$2.8 billion.

In essence, the transport of highly-hazardous materials is a “bet the business” public service that the government forces railroads to perform.

Railroads face these huge risks for a tiny fraction of their business. In 2005, railroads moved just over 100,000 TIH carloads and nearly 37 million total carloads. Thus, shipments of TIH constituted only about 0.3 percent of all rail carloads. The revenue that highly-hazardous materials generate does not come close to covering the potential liability to railroads associated with this traffic. Moreover, the insurance industry is unwilling to fully

insure railroads against the multi-billion dollar risks associated with highly-hazardous shipments. And even though TIH accounts for a tiny fraction of rail carloads, it contributes approximately 50 percent of the rapidly-rising overall cost of railroad insurance.

For all these reasons, the current environment for the rail transportation of highly-hazardous materials, especially TIH, is untenable. If the federal government is going to require railroads to transport highly-hazardous materials, it must address the “bet the company” risk it forces railroads to assume.

Congress can address this inequity in one of at least three ways. First, Congress could create a statutory liability cap for freight railroads similar to the one that applies to Amtrak. Amtrak’s total liability for all claims, including punitive damages, from a single accident — regardless of fault — is capped at \$200 million. Congress could enact a similar type of cap on the liability a freight railroad would incur from an accident involving highly-hazardous materials, regardless of fault, with the government paying liabilities in excess of the cap.

Second, Congress could enact a Price-Anderson type solution. Price-Anderson limits a company’s liability from an incident involving the release of nuclear material (including in transportation) and provides for a fund, to which all owners of nuclear power plants contribute when an incident occurs, to cover damages exceeding that limit. Under a similar rail proposal, railroads would be liable for a defined amount of damages arising from a rail accident involving highly-hazardous materials. Damages above that defined amount would be paid from a fund to which producers and end-users of these materials would contribute in the event of an incident.

The main purpose of such legislation would be to cap the railroad’s liability for claims, while still ensuring compensation for the general public. However, it also seeks to

balance the societal need to compensate the injured and damaged with the need for any railroad involved to be able to continue to operate and remain viable.

Both of these proposals leave railroads with substantial liability. Both are also reasonable, given railroads' federally-imposed common carrier obligation and the fact that accidents occur even when railroads operate carefully and safely. Under either proposal, limiting freight railroads' liability from an accident involving highly-hazardous materials would reduce railroads' risk exposure. It would also bring certainty to the insurance market. Hopefully, more insurance companies would again be willing to offer railroads coverage.

Absent these two alternatives, Congress should relieve railroads of their common carrier obligation to haul TIH and other highly-hazardous materials. If Congress will not provide some degree of protection from unlimited potential liability from transporting these materials, then it should not mandate that the railroads' shareholders assume that risk. Rather, railroads should be permitted to decide for themselves whether to accept, and at what price they are willing to accept, such materials for transportation.

What Railroads Are Doing

In the meantime, railroads support prompt, bold actions by all stakeholders to reduce the risks associated with hazmat transport. Railroads themselves are taking the lead:

- In December 2006, an industry committee approved a new standard for chlorine and anhydrous ammonia tank cars that will significantly reduce the risk of a release. (Anhydrous ammonia and chlorine combined account for around 80 percent of rail TIH movements.) The standard will be phased in beginning in 2008.²
- As noted earlier, railroads help communities develop and evaluate emergency response plans; provide training for more than 20,000 emergency responders each year through their own efforts and the Transportation Community

² The delay in implementation is due to an FRA request.

Awareness and Emergency Response Program (TRANSCAER); and support Operation Respond, a nonprofit institute that develops technological tools and training for emergency response professionals.

- Railroads work closely with chemical manufacturers in the Chemical Transportation Emergency Center (Chemtrec), a 24/7 resource that coordinates and communicates critical information for use by emergency responders in mitigating hazmat incidents.
- Railroads participate in a variety of R&D efforts to enhance tank car and hazmat safety. For example, the Tank Car Safety Research and Test Project (which is funded by railroads, tank car builders, and tank car owners) analyzes accidents involving tank cars to help identify the causes of tank car releases and prevent future occurrences.
- Upon request, railroads provide local emergency response agencies with, at a minimum, a list of the top 25 hazardous materials transported through their communities. The list helps responders prioritize emergency response plans.
- For trains and routes carrying a substantial amount of highly-hazardous materials, railroads utilize special operating procedures to enhance safety.
- In addition to implementing their Terrorism Risk Analysis and Security Management Plan, railroads are working with DHS and the DOT to identify opportunities to reduce exposure to terrorism on rail property.
- Railroads offer hazmat awareness training to all employees who are involved in hazmat transportation. Employees responsible for emergency hazmat response efforts receive far more in-depth training.
- Railroads are pursuing a variety of technological advancements to enhance rail safety, including hazmat safety.
- Railroads are working with TIH manufacturers, consumers, and the government to explore the use of coordinated routing arrangements to reduce the mileage and time in transit of TIH movements.

What Hazmat Manufacturers and Consumers Should Do

Manufacturers and consumers of hazardous materials should take a number of steps to help ensure hazmat safety.

First, concerted efforts should be made to encourage development and utilization of “inherently safer technologies,” which involve the substitution of less-hazardous materials for highly-hazardous materials, especially TIH, in manufacturing and other processes. As noted in a recent report by the National Research Council (part of the National Academy of

Sciences), “the most desirable solution to preventing chemical releases is to reduce or eliminate the hazard where possible, not to control it.” Ways this can be achieved include “modifying processes where possible to minimize the amount of hazardous material used” and “[replacing] a hazardous substance with a less hazardous substitute.”³ In a similar vein, in a January 2006 report, the Government Accountability Office (GAO) recommended that the Department of Homeland Security “work with EPA to study the advantages and disadvantages of substituting safer chemicals and processes at some chemical facilities.”⁴

One real-world example of product substitution occurred at the Blue Plains wastewater treatment facility just a few miles from the U.S. Capitol. Like many wastewater treatment facilities, Blue Plains used chlorine to disinfect water. Not long after 9/11, the facility switched to sodium hypochlorite, a safer alternative.

Railroads recognize that the use of TIH cannot be immediately halted. However, over the medium to long term, product substitution would go a long way in reducing hazmat risks.

Second, manufacturers and receivers of TIH, in conjunction with railroads and the federal government, should continue to explore the use of “coordination projects” to allow TIH consumers to source their needs from closer suppliers. For manufacturers and users, this could involve “swaps.” For example, if a chlorine user contracts with a chlorine supplier located 600 miles away, but another supplier is located 300 miles away, the supplier located 600 miles away might agree to allow the closer shipper to supply the user.

³ *Terrorism and the Chemical Infrastructure: Protecting People and Reducing Vulnerabilities*, National Research Council – Board on Chemical Sciences and Technology, May 2006, p. 106.

⁴ *Homeland Security: DHS is Taking Steps to Enhance Security at Chemical Facilities, but Additional Authority is Needed*, Government Accountability Office, January 2006, p. 7.

Third, hazmat consumers and manufacturers should support efforts aimed at increasing tank car safety and reliability. Recently, for example, the FRA, Dow Chemical, Union Pacific, and the Union Tank Car Company announced a collaborative partnership to design and implement a next-generation railroad tank car. (TTCI has been selected to support testing and developments initiatives related to this project.)

What the Government Should Do

The government too has a key role to play. First, as noted earlier, if the government requires railroads to transport highly-hazardous materials (via their common carrier obligation), it must address the “bet the company” risk this obligation forces railroads to assume.

Second, the government should help facilitate the “coordinated routing arrangements” and “coordination projects” mentioned earlier.

Third, the government should encourage the rapid development and use of “inherently safer technologies” to replace TIH and other highly-hazardous materials.

Fourth, the government should reject proposals that would allow state or local authorities to ban hazmat movements through their jurisdictions or order railroads to provide local authorities advance notification of hazmat movements through their jurisdictions.

The purposes of these types of proposals are protection of the local populace against hazmat incidents, including terrorist attack (especially in perceived “high threat” areas), and enhancing the ability to react more quickly to hazmat incidents. The proposals may be well intended, but the end result of their enactment on a locality-by-locality basis would likely be an *increase* in exposure to hazmat release and *reduced* safety and security.

Banning hazmat movements in individual jurisdictions would not eliminate risks, but instead would shift them from one place to another and from one population to another. In

shifting that risk, it could foreclose transportation routes that are optimal in terms of overall safety, security, and efficiency and force railroads to use less direct, less safe routes.

The rail network is not similar to the highway network where there are myriad alternate routes. In the rail industry, rerouting could add hundreds of miles and several days to a hazmat shipment, and those extra miles and days could be on rail infrastructure that is less suitable (for a variety of reasons) to handling hazmat. Additional switching and handling of cars carrying hazmat could be needed, as could additional dwell time in yards. As the Department of Justice and DHS noted in a joint brief opposing a proposed D.C. hazmat ban, the increase in the total miles over which hazmat travels and the increase in total time in transit would “increase their exposure to possible terrorist action,” and therefore potentially *reduce* safety and security.⁵ The U.S. DOT also submitted a statement recognizing that banning hazmat shipments through certain areas reduces both safety and security.

If hazmat were banned in one jurisdiction, other jurisdictions would undoubtedly follow suit. In fact, that is already happening. In the wake of so far unsuccessful attempts by the D.C. City Council to ban hazmat movements through Washington, similar efforts are being discussed for Atlanta, Baltimore, Boston, Cleveland, Chicago, Las Vegas, Memphis, Philadelphia, Pittsburgh, and probably other cities too, as well as for all of California.

An integrated, effective national network requires uniform standards that apply nationwide. The clarity and efficiency that uniformity brings would be lost if different localities and routes were subject to widely different rules and standards, or if local and/or state governments could dictate what types of freight could pass through their jurisdictions.

⁵ It has been estimated, for example, that a ban on hazmat transport through the District of Columbia would result in some 2 million additional hazmat car-miles as carriers had to use circuitous alternative routes.

The problem is especially acute for railroads, whose network characteristics and limited routing options mean that disruptions in one area can have profound impacts thousands of miles away. These disruptions would negatively affect all rail traffic, not just hazmat traffic.

Thus, if policymakers determine that hazmat movements should be banned, they should be banned nationwide, rather than on a locality-by-locality basis.

Hazmat pre-notification to local authorities is problematic for several reasons and may not accomplish the goals of those seeking it.

First, upon request the rail industry already notifies communities of, at a minimum, the top 25 hazardous commodities likely to be transported through their area. In the event of a hazmat incident, train consists are available to emergency responders, and railroads, at TSA request, have agreed to provide movement data on all TIH cars.

Second, pre-notification would vastly increase the accessibility of hazmat location information. Making this information more accessible could increase vulnerability to terrorist attack by magnifying the possibility that the information could fall into the wrong hands.

Third, at any one time, thousands of hazmat carloads are moving by rail throughout the country, constantly leaving one jurisdiction and entering another. The vast majority of these carloads do not — and due to the nature of rail operations, cannot be made to — follow a rigid, predetermined schedule. The sheer quantity and transitory nature of these movements would make a workable pre-notification system extremely difficult and costly to implement, for railroads and local officials alike. That is why the fire chief of Rialto, California, commented, “You’d have to have an army of people to stay current on what’s coming through. I think it wouldn’t be almost overwhelming. It would be overwhelming.” The greater the number of persons to be notified, the greater the difficulty and cost.

Fourth, railroads provide training for hazmat emergency responders in many of the communities they serve, and they already have well-established, effective procedures in place to assist local authorities in the event of hazmat incidents.

Finally, since railroads already make communities aware of what types of hazardous materials are likely to be transported through their area and since they already provide 24/7 assistance for emergency responders (many of whom railroads have trained), it is not at all clear that information obtained by local authorities through a pre-notification system would improve their ability to respond to hazmat incidents in any meaningful way.

Rail Employee Security Training

Railroad security efforts depend a great deal on the efforts of railroads' dedicated and highly-professional employees — including engineers and conductors aboard trains; maintenance of way crews, inspectors, and signalmen working along railroad rights-of-way; railroad police officers; and others. They are the “eyes and ears” in the industry's security efforts, and we should all be grateful for their vigilance and care.

The freight rail industry trains its employees to be vigilant, to report suspicious objects and activities, and to keep out of harm's way. The training has encompassed topics such as what to do when an employee sees a stranger or suspicious activity on rail property; to whom an anomaly should be reported; the need to keep information about train movements and cargos confidential; and the need to keep rail property secure and safe.

With 9/11, it became clear to railroads, as it did to firms in other industries, that security awareness would have to take on new importance. In response, Class I railroads soon thereafter provided a training video and/or printed materials to all employees — in most cases mailing the materials to employees' homes — that could be characterized as “Security

Awareness 101.” In the materials, the railroads expressed to their employees three fundamental expectations that to this day remain cornerstones of rail employees’ responsibilities regarding security: don’t put yourself in danger; report suspicious activities on or around railroad property; and don’t divulge sensitive information about rail operations to others.

Over time, freight railroads began to incorporate security issues in a more formal fashion — for example, as part of employees’ periodic FRA-mandated safety rules recertification, as part of new-hire training, and as part of new manager training. Many railroads have incorporated security issues into employees’ manual of standard operating practices. Moreover, all railroads are compliant with U.S. DOT-mandated HM-232 security training for employees who handle hazardous materials.

More recently, railroads concluded that rail security would be enhanced if rail employee security training was more uniform across railroads through use of a standardized curriculum, and railroads have made that harmonization a reality.

Much has been done in collaboration with the National Transit Institute (NTI) at Rutgers University. NTI was established under the Intermodal Surface Transportation Efficiency Act of 1991 to develop, promote, and deliver training and education programs for the public transit industry. Freight railroads are fortunate to have been able to take advantage of NTI’s success in promoting safety and security in public transit to develop an interactive, uniform security awareness curriculum for freight railroad employees.

The standardized curriculum has four modules: *What is Security; Vulnerability, Risk, and Threat; What to Look For; and Employees’ Role in Reducing Risk*. The goal of the standardized curriculum is to provide rail employees with an understanding of their role and

responsibility in system security, and how to implement their companies' procedures upon detection of suspicious objects or activities.

For example, one module of the curriculum focuses on what system security entails in a general sense — *i.e.*, the use of operating and management policies and procedures to reduce security vulnerabilities to the lowest practical level, as well as a process focusing on preventing all levels of crime against people and property. Under a system security approach, rail employees are taught to realize that they and their duties are part of a larger, extensive system and that system security begins with the employee. To that end, employees are encouraged to be observant and to be familiar with their companies' policies and procedures in the event of a threat or incident.

Another module of the curriculum covers how to identify suspicious or dangerous activities. In the case of suspicious individuals, the focus is on behavior — specifically, where the person is, when he or she is there, and what he or she is doing. Railroads know that their employees know their daily work area better than anyone and are in the best position to determine if something looks wrong or is out of place. Thus, employee training emphasizes being familiar with the work area; observing and reporting suspicious activities and objects; reporting missing or malfunctioning equipment; and, if appropriate and endorsed by railroad policies, approaching and engaging persons to resolve or confirm suspicions. Rail employees are not to approach threatening people; try to intervene in dangerous activities; or pick up, touch, or move suspicious objects. They are expected to withdraw from dangerous environments and situations and are expected to report dangerous situations immediately.

As part of the standardized curriculum, employees are also trained how to react to threats, which may take the form of perceived suspicious activity, suspicious and/or out-of-

place objects or vehicles, evidence of tampering with equipment, phone calls or other warnings, or other circumstances. Again, railroads do not expect their employees to “play the hero” by potentially putting themselves in harm’s way. Instead, they are expected to follow their company’s policies and procedures, inform the appropriate authority of the situation, move to a safe location, and wait for further instructions.

We submitted our employee security training program both to DHS and to FRA for review and comment in February 2006. TSA reviewed the rail industry’s training program, and advised us that it is “relevant and up-to-date” and is “helpful” in “rais[ing] the baseline of security-related knowledge.” Recently, TSA inspectors surveyed 2,600 railroad employees and determined that 80 percent of the employees have a medium or high level of security awareness.

Class I railroads will complete security training for front-line workers (security personnel, dispatchers, train operators, other on-board employees, maintenance and maintenance support personnel, and bridge tenders) by the end of this year. Going forward, rail employee security training is being documented and records of it are being maintained.

As the above information makes clear, railroads treat very seriously their obligations regarding security and have made sustained, earnest efforts to provide their employees with the tools and training they need to react appropriately when security-related issues arise. Moreover, railroads are not standing still. Through their efforts with NTI and others, railroads are continually refining their training efforts to improve their usefulness and effectiveness.

Railroad Security Legislation

A number of proposals have been offered in the Senate and House of Representatives regarding railroad security. Freight railroads are always ready and willing to discuss how

security can be enhanced more effectively. To that end, railroads support provisions of rail security legislation that:

- Address the “bet the company” risk railroads must assume because of their common-carrier obligation to carry highly-hazardous materials.
- Encourage rapid development and implementation of “inherently safer technologies” as substitutes for highly-hazardous materials, especially TIH.
- Provide funding for rail security research and deployment projects and rail security technologies.
- Require federal authorities to develop a comprehensive security plan that identifies the most important rail assets and the biggest threats to those assets. The AAR’s security plan should be the basis for this federal effort.
- Allow police officers of one railroad to exercise law enforcement powers on the property of another railroad.
- Establish a proper balance between efforts to enhance security and allowing the free flow of goods that is critical to our societal and economic health.
- Ensure that any technology that is mandated to track and locate rail cars carrying hazmat and/or to identify actual or imminent hazmat release is fully proven, functional, reliable, and cost effective, and does not impede or endanger existing railroad systems.
- Make expenses mandated by the government (including mandates that result from high-risk corridor assessments) eligible for critical infrastructure protection grants.
- Make TTCI a member of the National Domestic Preparedness Consortium.
- Engage the expertise and experience of rail industry personnel as significant domestic intelligence assets.

Conclusion

U.S. freight railroads are proud of the success they achieved in keeping our nation’s vital rail transport link open following the September 11, 2001 terrorist attacks. Since then, railroads have taken many steps to increase the security of our nation’s rail network, including the development of a comprehensive security management plan that incorporates four progressively severe alert levels. Railroads will continue to work with this committee, others in Congress, federal agencies, and all other relevant parties to further enhance the safety and security of our nation’s railroads and the communities they serve.

AAR Comments on HR 1269

Regarding specific rail-related provisions of the Rail and Public Transportation Security Act of 2007:

- Section 3 calls for the Department of Homeland Security (DHS) to develop and implement a national strategy for rail and public transportation security. Railroads support this provision, particularly with respect to the mandate to develop a strategy to research and develop new technologies for securing rail transportation.
- Section 5 requires DHS to issue regulations requiring railroads to conduct vulnerability assessments and prepare security plans. As discussed in testimony, the rail industry is already well beyond the assessment stage. The legislation should make clear that DHS should review and may accept the security assessments and plans railroads already have in place to meet the requirements of this section.

Section 5 also calls for the identification of a security coordinator "to require immediate communications from appropriate federal officials. AAR's members already maintain safety/security offices that are open around the clock, and the AAR maintains a 24/7 security emergency line.

Section 5 also requires plans for locating shipments of railroad cars transporting "extremely hazardous materials or nuclear waste" that are "lost or stolen." With all due respect, the loss or theft of tank cars is not a problem in our industry. Railroads, at the request of the TSA, have agreed to provide movement data on all rail cars carrying toxic inhalation hazards (TIH).

- Section 6 requires DHS to develop a strategic information sharing plan to ensure the development of tactical and strategic intelligence pertaining to threats and vulnerabilities for dissemination to appropriate stakeholders. We support appropriate sharing of information. However, there should be clear and unequivocal protections to ensure that strategic information does not fall into the hands of those who would harm us.
- Section 7 establishes a program for making grants to both passenger and freight railroads for infrastructure protection. We strongly support this provision, particularly the inclusion of "overtime reimbursement for additional security personnel during periods of heightened security" as an eligible security improvement.
- Section 11 requires DHS to develop a security training program for railroad workers and to issue guidance on such training to railroads. It is important to note, though, that freight and passenger railroad environments are very different, and some elements of the employee security training program recommended in the bill (e.g., element 5 on evacuation procedures) may be appropriate for passenger railroads but are not appropriate for freight railroads. Moreover, some elements of the bill (e.g., element 1 on determining the seriousness of a threat)

would require freight railroad employees to put themselves in harm's way, which contradicts existing freight railroad policies and procedures.

- Section 12 requires DHS to develop a program for conducting security exercises, including live exercises at railroad facilities. The railroad industry conducts regular table top exercises to ensure maximum continued effectiveness of its security plan. Railroads are concerned that live government exercises, if unannounced and not carefully coordinated with the railroads involved, could result in fatalities or injuries. To guard against this, we recommend that the provision be modified to require DHS to coordinate such exercises with railroads to ensure the proper safety of all participants in the exercises while on railroad property.
- Section 13 requires DHS to establish a research and development program for projects related to rail security. The AAR strongly supports this provision. On February 13, 2007, AAR offered testimony at a hearing of the House Appropriation's Subcommittee on Homeland Security. That testimony included a list of R&D projects that, if appropriately funded, would significantly enhance rail security.
- Section 14 calls for new whistleblower protections, under the Department of Labor, designed to shield rail employees from retaliation for certain conduct involving issues related to homeland security.

Railroads do not object to equitable whistleblower protections for rail workers, but they do not believe that there should be one set of rules for whistleblowing on safety matters and a different set of rules for whistleblowing on security matters. The Federal Railroad Safety Act already has a whistleblower provision (49 U.S.C. Section 20109), and any expansion of rail employee whistleblower protections to include security should be undertaken within the context of Section 20109. Creating a new, separate system under the aegis of the Department of Labor is both unnecessary and potentially confusing, since situations could develop that could be handled under either Section 20109 or the Department of Labor.

With respect to Section 14, if the government invokes a states secrets privilege in a case where a railroad employee has filed a claim against a railroad, the railroad should not be precluded from presenting its justifications for any action taken against that employee, and the railroad should be able to obtain a judgment based on the justifications the railroad is able to provide.

- Section 15 would increase the number of non-aviation TSA inspectors from 100 to "at least 500" by the end of 2010. Railroads welcome the provisions specifying minimum qualifications for such inspectors and for requiring a clear delineation of responsibilities between TSA inspectors, FRA inspectors, state and local law enforcement, and railroad police. We are not convinced, however, that such an inspection workforce is necessary in the freight railroad environment, or that the new TSA inspectors would not simply duplicate the work currently performed by FRA inspectors. Railroads would prefer to see the limited resources available for rail security applied to the physical protection of personnel, critical assets, and the public.

- Sec. 16 would include the Transportation Technology Center, Inc as part of the National Domestic Preparedness Consortium (NDPC). We strongly support this provision. Today, a facility specifically targeted at emergency response training for freight and passenger railroad environments is notably absent from the NDPC. Including TTCL in the NDPC offers a unique opportunity to improve our nation's ability to prevent, minimize, and respond to potential rail-related terrorist attacks. Many of the projects outlined and recommended in the Rail and Public Transportation Security Act of 2007, and many other projects that are not mentioned but have important safety and security benefits, are already underway at TTCL. We urge you to utilize this unique and invaluable resource.

Railroads respectfully suggest that a number of other additional legislative provisions would enhance railroad security:

- Address the "bet the company" risk railroads must assume because of their common-carrier obligation to carry highly-hazardous materials, especially "toxic inhalation hazards" (TIH).
- Encourage rapid development and implementation of "inherently safer technologies" as substitutes for highly-hazardous materials, especially TIH.
- Ensure that any technology that is mandated to track and locate rail cars carrying hazmat and/or to identify actual or imminent hazmat release is fully proven, functional, reliable, and cost effective, and does not impede or endanger existing railroad systems.
- Make expenses mandated by the government (including mandates that result from high-risk corridor assessments) eligible for critical infrastructure protection grants.
- Allow police officers of one railroad to exercise law enforcement powers on the property of another railroad.¹
- Engage the expertise and experience of rail industry personnel as significant domestic intelligence assets.

¹ Such a measure was contained in legislation (H.R. 2351) introduced in the 109th Congress sponsored by Rep. James Oberstar, chairman of the House Transportation and Infrastructure Committee, and is included in S. 184 (the "Surface Transportation and Rail Security Act of 2007"), which is now included in S. 4 (the "Improving America's Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007").

TESTIMONY OF
WILLIAM W. MILLAR, PRESIDENT
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
AND THE
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS
MATERIALS
OF THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
ON
TRANSIT AND RAIL SECURITY

March 7, 2007

SUBMITTED BY

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APTA is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Mr. Chairman and Madam Chairwoman thank you for this opportunity to provide testimony at this joint subcommittee hearing on the security and safety of public transportation systems. We appreciate your interest in public transportation security, and we look forward to working with you on this issue.

I also want to thank the Committee on Transportation and Infrastructure for introducing and reporting the "Public Transportation Security Assistance Act of 2006," H.R. 5808, in the 109th Congress. As you know, this legislation would have authorized \$3.4 billion in transit security grant funding over a three-year period for transit systems. I thank the committee for all of its work on transit security. (Having just received a copy of Chairman Oberstar's transit security legislation on the day of the deadline for submitting this written testimony, I am in the process of analyzing it and will address it in my oral statement.)

ABOUT APTA

The American Public Transportation Association (APTA) is a nonprofit international association of more than 1,500 public and private member organizations, including transit systems and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products. More than ninety percent of the people using public transportation in the United States and Canada are served by APTA member systems.

OVERVIEW

Public transportation is one of the nation's critical infrastructures. We cannot overemphasize the critical importance of the service we provide in communities throughout the country. Americans take about 10 billion transit trips each year. People use public transportation vehicles over 34 million times each weekday. This is more than eighteen times the number of daily domestic boardings on the nation's airlines.

Safety and security are the top priority of the public transportation industry. The Government Accountability Office (GAO) released a report several years ago which said "about one-third of terrorist attacks worldwide target transportation systems, and transit systems are the mode most commonly attacked." Transit agencies had already taken many steps to improve security prior to the September 11, 2001 terrorist attacks and have significantly increased efforts since that date. Since 9/11, public transit agencies in the United States have spent over \$2.5 billion on security and emergency preparedness programs, and technology to support those programs, largely from their own budgets with only minimal federal funding.

Since 9/11, the federal government has spent over \$24 billion on aviation security while has only allocated \$549 million for transit security. Last year's attacks in Mumbai and the previous attacks in London and Madrid further highlight the need to strengthen security on public transit agencies in the U.S. and to do so without delay. We need to do what we can to prevent the kind of attacks that caused more than 400 deaths and nearly 3,000 injuries on rail systems in Mumbai, London and Madrid.

We urge Congress to act decisively. While transit agencies are doing their part, we need the federal government to be a full partner in the fight against terrorism. Terrorist attacks against U.S. citizens are clearly a federal responsibility and the federal government needs to increase its support for transit security improvements. In light of documented needs, we urge Congress to increase federal support for transit security grants to assist transit agencies in addressing the \$6 billion in identified

security needs. We ask that Congress provide no less than \$545 million in the Fiscal Year (FY) 2008 Homeland Security Appropriations bill for transit security. Funding at that level annually would allow for significant security improvements in the nation's transit agencies over a 10-year period. Federal funding for additional security needs should provide for both hard and soft costs as described below and be separate from investments in the federal transit capital program.

We also urge Congress to provide \$500,000 to the Department of Homeland Security (DHS) for grant funding to the APTA security standards program, under which APTA is working with its federal partners to develop transit security standards. Finally, we urge Congress to provide \$600,000 annually to maintain the Public Transit Information Sharing Analysis Center (ISAC) which provides for the sharing of security information between transit agencies and DHS.

To improve the distribution of funds under the existing transit security programs, we recommend that the existing process for distributing DHS grants be modified so that grants are made directly to transit agencies, rather than through State Administrating Agencies (SAA). We believe direct funding to transit agencies would be quicker and cheaper. The current process and grant approval procedures have created significant barriers and time delays in getting funds into the hands of transit agencies for security improvements. We believe that DHS should work with the Federal Transit Administration (FTA) on the distribution of funds since FTA understands transit and already effectively administers a much larger capital grant program to transit agencies.

As transit security is part of the larger war on terrorism, we urge Congress to continue providing transit security grants with no state or local match requirement. A local or state match requirement would have detrimental consequences by making security improvements contingent on a community's ability to raise local funding. A local match requires the approval of a local governing body. Approval of such grants in an open, public forum, where specific project information is discussed is simply inappropriate for security sensitive projects. We should not make such information available to potential terrorists.

BACKGROUND

In 2004, APTA surveyed its U.S. transit agency members to determine what actions were needed to improve security for their customers, employees and facilities. In response to the survey, transit agencies around the country identified in excess of \$6 billion in transit security investment needs.

In FY 2003, \$65 million in federal funds were allocated by DHS for 20 transit agencies. In FY 2004, \$50 million was allocated by DHS for 30 transit agencies. In FY 2005, Congress specifically appropriated \$150 million for transit, passenger and freight rail security. Out of the \$150 million, transit received \$135 million. In FY 2006, Congress appropriated \$150 million. Out of the \$150 million, transit received \$136 million. In FY 2007, Congress appropriated \$175 million. Out of \$175 million, transit is slated to receive \$163 million. We appreciate these efforts, but more needs to be done.

Transit agencies have significant and specific transit security needs. Based on APTA's 2003 Infrastructure Database survey, over 2,000 rail stations have no security cameras. According to our 2005 Transit Vehicle Database, 53,000 buses, over 5,000 commuter rail cars, and over 10,000 heavy rail cars have no security cameras. Less than one-half of all buses have automatic vehicle locator systems (AVLs) that allow dispatchers to know the location of the bus if an emergency occurs. Nearly seventy-five percent of demand response vehicles lack these AVLs. Furthermore, no transit agency has a permanent biological detection system. In addition, only two transit agencies have a permanent chemical detection system. A more robust partnership with the federal government would help to better address many of these specific needs.

We are disappointed that the Administration proposed only \$175 million for transit, passenger and freight rail security in the FY 2008 DHS budget proposal. Regrettably, the Administration failed to make a significant funding proposal to enhance the security of the tens of millions of Americans who use transit. Instead, the Administration chose to freeze security funding for transit, passenger rail, and freight rail security at the level in FY 2007. This funding level falls well short of the funds needed to ensure the safety of Americans who take public transportation. We are also disappointed that the Administration failed to propose funding for transit security standards or the Public Transit ISAC. Both of these programs could significantly enhance transit security for a minimal cost.

APTA is a Standards Development Organization (SDO) for the public transportation industry. We are now applying our growing expertise in standards development to transit industry safety and security, best practices, guidelines and standards. We have already initiated our efforts for security standards development and have engaged our federal partners from both the DHS and DOT in support of this initiative. Unfortunately, DHS has not agreed to provide funding to APTA for this effort. We respectfully urge Congress to provide \$500,000 to the DHS so that it can provide that amount in grant funding to the APTA security standards program. Our efforts in standards development for commuter rail, rail transit and bus transit operations have been significant and our status as a SDO is acknowledged by both the FTA and the Federal Railroad Administration (FRA). The FTA and the Transportation Research Board have supported our standards initiatives through the provision of grants while our members have dedicated a portion of their APTA dues for standards development.

We also would like to work with Congress and the Department of Homeland Security's Directorate of Science and Technology to take a leadership role in advancing research and technology development to enhance security and emergency preparedness for public transportation.

SECURITY GRANT PROGRAM

The DHS's Office of Grants and Training (G&T) is responsible for the distribution of the transit security grant program. G&T should be commended for reaching out to the transit industry in numerous listening sessions on our concerns. Staff from G&T have attended APTA conferences and participated in panel discussions. G&T staff has conducted various conferences around the country to explain the details of the transit security grant program. We continue to work with G&T on streamlining and improving the grant program but are frustrated with the results thus far.

Since the creation of the DHS, four separate offices have been responsible for the distribution of transit security grants. Funds were originally distributed by the Office for Domestic Preparedness (ODP). Then it became known as the Office of State and Local Government Coordination and Preparedness (SLGCP). Now it is known as the Office of Grants and Training (G&T). In addition, the Transportation Security Administration (TSA) is responsible for establishing policy for the program and must now coordinate with G&T.

Along with the organizational changes, each new office has changed the distribution process for the transit security grants. In FY 2003 under ODP, grants went directly to the transit authorities. In FY 2004 under SLGCP, grants went to the State Adminstrating Agencies (SAAs), which then distributed grants to the transit systems. In FY 2005 under SLGCP, grants went through the SAAs, which then distributed grants to eligible transit systems on a regional basis in coordination with the urban area. Eligible transit systems were then required to work with the SAAs, the urban area, and the other eligible transit systems in their region to come up with a regional transit security plan on how to spend the federal funding before the transit system could be awarded the grant. This is currently the process.

The transit systems that have been allocated DHS funds are accustomed to receiving federal transit funding directly to designated recipients from FTA under authorizing law. We believe that DHS should work with the FTA in distributing grants to take advantage of FTA's current familiarity with transit agencies and its own grant making process. While we believe Congress should continue to make federal transit security grants available through the DHS, the FTA model has been in place for years and works well in distributing funds quickly to transit systems. In contrast, DHS's current process and conditions have created significant barriers and time delays in getting funds into the hands of transit agencies where they can be used to protect riders. We urge Congress to get transit security grants directly to the transit authorities in a way that takes advantage of FTA's experience and effective delivery system.

In that regard, we note that Section 3028, Subsection (c) of Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users, SAFETEA-LU (P.L. 109-59) requires the Secretary of Transportation and the Secretary of the Department of Homeland Security to "issue jointly final regulations to establish the characteristics of and requirements for public transportation security grants, including funding priorities, eligible activities, methods for awarding grants, and limitations on administrative expenses." We believe this rulemaking could be used to address our concerns and we ask the committee to direct that it do so.

INFORMATION SHARING

Since the terrorist attacks of September 11, 2001, public transit agencies across the country have worked diligently to strengthen their security plans and procedures. They have also been very active in training personnel and conducting drills to test their capacity to respond to emergencies. Also, to the extent possible within their respective budgets, transit agencies have been incrementally hardening their facilities through the introduction of technologies such as surveillance equipment, access control and intrusion detection systems. While transit agencies have been diligent, they have been unable to fully implement programs with current levels of assistance from the federal government.

A vital component of ensuring public transit's ability to prepare and respond to critical events is timely receipt of security intelligence in the form of threats, warnings, advisories and access to informational resources. Accordingly, in 2003, the American Public Transportation Association, supported by Presidential Decision Directive #63, established an ISAC for public transit agencies throughout the United States. A grant in the amount of \$1.2 million was awarded to APTA by the Federal Transit Administration to establish and operate a very successful Public Transit ISAC that operated 24 hours a day, 7 days a week, and gathered information from various sources, including DHS. The ISAC also passed information on to transit agencies following a careful analysis of that information. However, given that the Federal Transit Administration was subsequently unable to access security funds, and given the decision of DHS to not fund ISAC operations, APTA has had to look for an alternate method of providing security intelligence through DHS's newly created Homeland Security Information Network (HSIN). APTA continues to work with DHS staff to create a useful HSIN application for the transit industry. It is clear, however, that while the HSIN may become an effective resource, it does not duplicate or provide the 24/7 two-way communication functions provided through the Public Transit ISAC. We believe that consistent, on-going and reliable funds from Congress should be provided for the Public Transit ISAC which has been proven an effective delivery mechanism for security intelligence. We respectfully urge Congress to provide \$600,000 annually to maintain the Public Transit ISAC.

In addition, APTA's membership includes many major international public transportation systems, including the London Underground, Madrid Metro, and the Moscow Metro. APTA also has a strong partnership with the European-based transportation association, the International Union of Public

Transport. Through these relationships, APTA has participated in a number of special forums in Europe and Asia to give U.S. transit agencies the benefit of their experiences and to help address transit security both here and abroad.

COST OF HEIGHTENED SECURITY

Following the attacks in London in 2005, APTA was asked to assist the TSA in conducting a teleconference between the TSA and transit officials to discuss transit impacts pertaining to both increasing and decreasing the DHS threat levels. There is no question that increased threat levels have a dramatic impact on budget expenditures of transit agencies and extended periods pose significant impacts on personnel costs. The costs totaled \$900,000 **per day** for U.S. public transit agencies or an estimated \$33.3 million from July 7 to August 12, 2005 during the heightened state of "orange" for public transportation. This amount does not include costs associated with additional efforts by New York, New Jersey and other systems to conduct random searches.

Many transit agencies are also implementing other major programs to upgrade security. For example, New York's Metropolitan Transportation Authority (NY-MTA) is taking broad and sweeping steps to help ensure the safety and security of its transportation systems in what are among the most extensive security measures taken by a public transportation system to date. NY-MTA will add 1,000 surveillance cameras and 3,000 motion sensors to its network of subways and commuter rail facilities as part of a \$260 million Integrated Electronic Security System. In fact, NY-MTA plans to spend over \$1.2 billion on transit security.

SECURITY INVESTMENT NEEDS

Since the awful events of 9/11, the transit agencies have invested more than \$2.5 billion of their own funds for enhanced security measures, building on the industry's already considerable efforts. At the same time, our industry undertook a comprehensive review to determine how we could build upon our existing industry security practices. This included a range of activities, which include research, best practices, education, information sharing in the industry, and surveys. As a result of these efforts we have a better understanding of how to create a more secure environment for our riders and the most critical security investment needs.

Our survey of public transportation security identified enhancements of at least \$5.2 billion in additional capital funding to maintain, modernize, and expand transit system security functions to meet increased security demands. Over \$800 million in increased costs for security personnel, training, technical support, and research and development have been identified, bringing total additional transit security funding needs to more than \$6 billion.

Responding transit agencies were asked to prioritize the uses for which they required additional federal investment for security improvements. Priority examples of operational improvements include:

- Funding current and additional transit agency and local law enforcement personnel
- Funding for over-time costs and extra security personnel during heightened alert levels
- Training for security personnel
- Joint transit/law enforcement training
- Security planning activities
- Security training for other transit personnel

Priority examples of security capital investment improvements include:

- Radio communications systems
- Security cameras on-board transit vehicles and in transit stations
- Controlling access to transit facilities and secure areas
- Automated vehicle locator systems
- Security fencing around facilities

Transit agencies with large rail operations also reported a priority need for federal capital funding for intrusion detection devices.

ONGOING TRANSIT SECURITY PROGRAMS

While transit agencies have moved to a heightened level of security alertness, the leadership of APTA has been actively working with its strategic partners to develop a practical plan to address our industry's security and emergency preparedness needs. In light of our new realities for security, the APTA Executive Committee has established a Security Affairs Steering Committee. This committee addresses our security strategic issues and directions for our initiatives. This committee will also serve as the mass transit sector coordination council that will interface with DHS and other federal agencies forming the government coordinating council.

In partnerships with the Transportation Research Board, APTA supported two TCRP panels that identified and initiated specific projects developed to address *Preparedness/Detection/Response to Incidents and Prevention and Mitigation*.

In addition to the TCRP funded efforts, APTA has been instrumental in the development of numerous security and emergency preparedness tools and resources. Many of these resources were developed in close partnership with the FTA and we are presently focused on continuing that same level of partnership with various entities within DHS. Also, APTA has reached out to other organizations and international transportation associations to formally engage in sharing information on our respective security programs and to continue efforts that raise the bar for safety and security effectiveness.

CONCLUSION

In light of our nation's heightened security needs since 9/11, we believe that increased federal investment in public transportation security by Congress and DHS is critical. The public transportation industry has made great strides in transit security improvements since 9/11 but much more needs to be done. We need the federal government to increase its support for transit security grants that will help transit agencies continue to address the \$6 billion in identified transit security investment needs. We urge this Congress to provide no less than \$545 million in the FY 2008 Department of Homeland Security Appropriations bill. We also urge Congress to fund the APTA security standards program and the Public Transit ISAC as previously described.

We have also found that investment in public transit security programs, resources and infrastructures provides a direct benefit in preparation and response to natural disasters as well. We look forward to building on our cooperative working relationship with the Department of Homeland Security and Congress to begin to address these needs. We again thank you and the subcommittee for allowing me to testify on these critical issues and look forward to working with you on safety and security issues.

Follow Up Questions from Ranking Member John Duncan

Mr. William Millar, APTA

- 1. Mr. Millar, what single security measure do you believe is the most effective in preventing, and responding to, terrorist attacks on transit systems? (Please answer with only one measure.)**

As we have learned from terrorist attacks on transit throughout the world, it is difficult to identify one single measure that is the most effective in preventing, and responding to, terrorist attacks on transit systems. However, in an effort to respond directly to your question, I would say that one of the first and most common measures discussed by transit agencies is to conduct training and exercises for personnel to ensure that they are prepared to respond quickly and appropriately in the event of a terrorist attack.

- 2. Mr. Millar, in your testimony you urged Congress to increase transit security grants to \$6 billion.**

- How did you arrive at the estimate of \$6 billion in “identified security needs”?**

APTA conducted a survey of its transit agency members during the first quarter of 2004 to determine (a) the amount of funds they spend on and need for their security function; (b) the extent to which they had increased and improved their security measures since September 11, 2001; and (c) the priorities they place on security measures that should be supported by federal funding.

As a result of this survey, we concluded that transit agency security-related investment needs are approximately \$6 billion. This amount includes \$5.2 billion for transit agency security-related capital investment plus \$800 million annually for security-related personnel and other security-related expenses.

- Has this estimate been validated by an independent source?**

This survey was conducted by APTA alone. However, we have asked for the Department of Homeland Security’s assistance in updating this survey and in providing information to our association on how the existing federal funding has been used.

- Does the estimate of needs encompass all transit agencies, or was some risk-based threshold set on whether to include security costs in the needs estimate?**

A sample of 120 transit agencies participated in the survey representing a cross section of transit agencies operating all modes of transit service, in communities of all

sizes, and in all areas of the country. While every system needs some federal investment, the survey revealed that the vast portion of investment is needed by the systems that are of the greatest risk.

- 3. Mr. Millar, you also asked Congress to provide \$545 million in appropriations for transit security in the FY 2008 Homeland Security Appropriations bill. Does this represent one fiscal year's worth of needs?**

No, this funding amount represents an annual level that would allow for significant security improvements in the nation's transit agencies over a 10-year period. As I stated in my testimony, federal funding for additional security needs should provide for both hard and soft costs and be separate from investments in the federal transit capital program. While transit security needs would be better and more quickly addressed with funding in excess of \$545 million annually, we believe that this level would better address those needs than the lower levels appropriated for transit security in recent years.

While there is transit security authorization legislation now moving through Congress, such legislation has not been enacted into law. Funding at the amounts authorized in legislation now moving through Congress would better help to address security improvements for transit agencies.

- 4. Mr. Millar, you have asked that Congress "get transit security grants directly to the transit authorities in a way that takes advantage of FTA's experience and effective delivery system." Does this mean that you want FTA to manage security grants, or not?**

We believe that the Congress and the Department of Homeland Security (DHS) should set security policy on priorities in coordination with the Department of Transportation (DOT), but that an interagency fund transfer between DHS and DOT take place and the existing DOT grant program mechanisms be used to quickly get the funding out the door.

**Questions by Congressman Henry E. Brown, Jr.
Highway & Rail Subcommittees Hearing on Transit & Rail Security
March 7, 2007**

Transit-Related Questions for Panel 1:

- 1. Transit providers, whether in a major city like here in Washington, or in smaller communities like those in my district, often serve a large proportion of tourists. Many of these visitors are not familiar with the transit system they are using, and for many the trip of that transit bus or subway might be their first time on public transit. Has anyone looked into this issue?**

Transit agencies across the nation serve millions of riders daily, including tourists who may be unfamiliar with the system and regular users. In fact, many communities encourage tourists to use public transportation for a variety of reasons. Transit agencies strive to assist all of their customers, using transit employees, good signage, daily tourist passes, and a variety of other means to make the system usable. For example, the Charleston Area Regional Transportation Authority (ARTA) utilizes a downtown shuttle bus service that many tourists take to visit the many attractions of Charleston. In addition, APTA is working with Google and AAA to include transit information when they provide directions and trip information.

- 2. Transit-based intelligent transportation systems are being deployed on more systems across the country. Is there a focus to find ways where ITS can both improve operations and security? What are some examples of dual use for ITS?**

Transit Intelligent Transportation System (ITS) deployments provide numerous security related opportunities and advantages. ITS systems depend upon extensive information technology networks in order to direct operations, monitor operating conditions, assess system status, provide information to travelers and system operators. These capabilities are essential for safety and security management as well as operations. Intelligent video monitoring systems are in use to detect unusual movements in transit vehicles and facilities. Computer aided dispatching systems in conjunction with GPS based vehicle location systems are available to detect and respond to emergency situations. Advanced traveler information systems represent an invaluable resource to deliver emergency instructions to passengers and system operators.

For example, investments in ITS communications systems alone represent an essential resource available for security applications. Most major transit operators have deployed ITS systems at some level and share information with first responders who may need to depend upon transit resources in times of emergency. Additionally, APTA and ITS America work jointly to develop ITS

applications that address specific transit needs. Together we sponsor the Advanced Public Transportation Systems (APTS) committee made up of industry professionals from across the country to work on these issues.

United States House of Representatives
Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
Subcommittee on Railroads, Pipelines and Hazardous Materials

Hearing on Transit and Rail Security
Rayburn House Office Building
Room 2167

March 7, 2007

Testimony of Peter J. Pantuso
President and Chief Executive Officer
American Bus Association

Introduction

Chairman DeFazio, Chairman Brown and members of the subcommittees, my name is Peter J. Pantuso, and I serve as the President and CEO of the American Bus Association.

First of all, Chairman DeFazio and Chairman Brown, please accept my "thanks" and that of the industry I represent for scheduling this hearing and for your consideration of the issue of transit and rail security. The American Bus Association and its members take seriously the duty to provide bus passengers with safe and efficient transportation options at reasonable cost, and for the ABA "safe" also means "secure". Your leadership and that of Committee Chairman James Oberstar has allowed ABA members to continue to hope that the security of the bus industry will be strengthened. The ABA looks forward to working with you to achieve this goal.

American Bus Association

The American Bus Association is the primary trade association representing the private over-the-road bus industry. While the name "American" and "Bus" may connote only bus transportation in the United States, our reach is much broader. ABA serves as the voice for almost 1,000 bus and tour operators throughout the U.S. and Canada, including American Coach Lines of Jacksonville, Florida, and in Portland, Oregon (the former Raz Transportation Company and Mears Transportation Group of Orlando, Florida are members. In addition, ABA represents a thousand hotel operators. Moreover, individual tourist attractions, such as the Empire State Building in New York City, the Hard Rock Cafes, and Sea World are ABA members. ABA also represents Convention and Visitors Bureaus (CVBs), for example, the Convention and Visitors Association of Lane County, Oregon; bus manufacturers, and other companies that service the private bus industry.

The ABA has 3800 members engaged in all manner of transportation, travel and tour services. In addition to the services noted above, our members provide commuter services, charter and tour operations, sightseeing and airport shuttle services throughout the nation. The private bus industry transports more than 600 million passengers each year, a total that compares favorably with the number of passengers carried by the nation's rail and airlines. In fact, the private bus industry carries more people in two weeks than Amtrak carries in one year. Moreover, ABA members link some 4347 bus terminals, airports and rail stations in the United States as opposed to the airlines' approximately 500 destinations and Amtrak's total number of destinations.

The difference between the bus industry, the airlines and Amtrak is that ABA bus operators are largely small businessmen and women – business people who operate in big cities and rural areas with little or most often no subsidy from the federal or state governments to support their day-to-day operations. And while the federal government continues to fund a massive effort to protect the airlines and Amtrak from further terrorist attacks, funds to aid the bus industry in the same effort have been, with one small exception, lacking.

Bus Security

Since the attacks on 9/11, the American Bus Association has been engaged in assessing the security needs of the bus industry. ABA bus operators have told us what they need to aid them in the protection of the industry. First, training is the highest priority. ABA members want to train their personnel, drivers, dispatchers and mechanics in the techniques of threat assessment, threat recognition and crisis management. Second, they need equipment. Examples of such equipment are cell phones, global positioning satellite (GPS) and other communications systems between drivers and dispatch and emergency first responders; driver shields; cameras for bus facilities and garages and staging areas; equipment to provide security “wandering” of bus passengers; as well as funds to provide other protection for significant bus passenger terminals at destinations such as Atlantic City, New Jersey, Orlando, Florida, and Las Vegas, Nevada.

Need for Federal Funds

While our list of programs and funds for bus security is on balance, a small one, the need for such federal funds is large. This is so because the private bus industry, for all of its reach and enormous passenger base, receives little public money and, as I have stated, the industry is one of small businessmen and women moving as many people annually as commercial airlines. Indeed, the average ABA member has eight to ten motorcoaches. The only two federal programs for which private bus operators are eligible are the so-called Section 5311(f) rural transportation fund which provides States with funds to subsidize intercity scheduled bus transportation and the Americans with Disabilities Act (ADA) wheelchair accessibility fund which provides a small amount of money to allow private bus operators to place wheelchair lifts on buses. In the case of the section 5311(f) program, the amount of funds available is limited to 15% of the Section

5311 rural transportation program. The wheelchair lift program is funded at \$7 million. It is important to realize that the cost of putting one wheelchair lift on a bus is between \$35,000 and \$40,000 and the demand approaches \$40 million annually. As such, many ABA members find themselves hard pressed to put wheelchair lifts on buses even at the current federal contribution level of 90% available to bus operators' fortunate enough to obtain a grant.

Committee Efforts

The cost of wheelchair lifts highlights the necessity for federal funding, especially for security funds. The cost of security training and equipment is most and requires periodic updating. Of course, the committee is familiar with the cost of security. Over the past several Congresses, the Committee has worked with the ABA to provide the industry with funds for security. In 2002, the Committee reported, and the House approved, HR 3429. That bill would have provided \$99 million in grants to help bus operators improve security. Security improvements that are critical in that during the past 80 years, 50% of international terrorist attacks have occurred on buses or in bus stations. Another example of the Committee's efforts is its reporting of HR 875 in 2004. This bill also provided funds to aid in training, equipping and maintaining security for bus personnel, facilities and passengers.

Each of the above bills provided funds through the Department of Homeland Security (DHS) to private bus operators for the purposes detailed above. This legislation requires DHS to distribute these funds pursuant to applications from bus operators. The applications would detail the amount requested, the purposes for the grant, the operational "footprint" of the bus operator and the improved security that would be expected should the grant application be approved. The program would provide the maximum amount of protection for the largest number of bus passengers. For each bill, ABA proposed that DHS consult with ABA or its members in determining the most effective way of distributing the security funds.

Appropriations Process

While the Congress has not yet passed a comprehensive bus security bill, the efforts detailed above are important because they have provided a glimpse of how to improve the nation's bus security. The American Bus Association has worked with the Congressional Appropriations Committees to secure bus security funds over the last several years. Since FY 2002 ABA has obtained some \$50 million for bus security grants little more than \$10 million per year. This amount is significantly short of the \$18 billion dollars that Congress has given the airline industry or the billions spent on Amtrak in the same time frame. Yet, these funds have allowed the private bus industry to take modest but necessary steps to improve security.

These funds have been distributed by DHS as a result of a competitive grant program each year. The application period for funds appropriated for FY 2007 closed last week. ABA expects the grant winners to be announced in mid summer. The

approximately \$11 million that will be distributed this year will be divided among scheduled service operators and charter and tour bus operators. ABA believes that while this division of funds is logical, DHS's application process does not result in the optimum use of security funds. The flaw in the funds distribution is one this Committee must consider repairing before finalizing its transit and rail security bill.

The Use of Security Funds

Since the advent of bus security funds in FY 2002, the private bus industry has put the funds to good use. Greyhound Lines, Inc. used security grant funds and its own funds to develop a driver lateral shield with which Greyhound bus drivers can fend off attacks. Greyhound also used funds to increase passenger "wandering" at its larger terminals. Greyhound will randomly provide passenger "wandering" to a select portion of its schedule at specific locations. Badger Coach Lines, a charter and tour bus company in Wisconsin, used a grant to purchase its own screening equipment, e.g., metal detectors and handheld wand devices. Other ABA members used grant money to install cameras in their maintenance facilities and staging areas, provide more protection in these areas, and provide drivers with cell phones. Several other ABA members used grant money to begin the process of installing Global Positioning Satellite (GPS) tracking technology to provide real time information on the location of their equipment. All of these efforts are worthy of security funding and should be continued.

In prior years DHS also disallowed funds to be used by certain segments of the industry and more recently for security training. In FY 2004 and 2005 ABA, in concert with the United Motorcoach Association (UMA), used grant money to begin a training program for bus company personnel. Our effort to train personnel in threat recognition and assessment and crisis management was one in which we "trained the trainers." We made the effort to train the safety and security directors of bus operating companies and to have them return home to train others in their companies.

ABA developed and used security training manuals and instructional CDs, all of which we provided at no cost to the students. The American Bus Association conducted sessions in several locations in the United States and was quite pleased with the results. Fully 90% of the evaluations we received found that the ABA security training program was "excellent" or "very good." In total, this ABA effort provided security training to some 200 bus operator personnel. ABA would like to mount such an effort again. But there is resistance on the part of DHS to allow organizations like ABA to apply for security grant funding. It is ABA's hope that the Committee will allow trade associations like ABA to apply for such funding in the future. We remain the only "vehicle" to pull together these smaller companies and provide the necessary guidance.

At this point I would like to reiterate that the bus operator efforts to improve security would largely not have been possible without federal funds. After 9/11 and before the availability of federal funds, few bus operators were able to fund any such security efforts without incurring increased costs. As one example, may I cite the efforts of C&J Trailways, an ABA member in New Hampshire. After 9/11, C&J Trailways

instituted a program in which all tickets were sold in the passenger's name after positive identification. This alone required the addition of staff at company operated terminals during peak traffic periods.

Even with the bus security funds available, the security costs to the bus industry increased. C&J Trailways expends over 100 hours each year in employee training related to security. The collective cost for the provision of these services and training exceeds \$90,000 on an annualized basis. Prior to 9/11, Greyhound estimates that it was spending approximately \$5 million annually on security. After 9/11, its costs increased to \$10 million annually. These costs will continue to increase.

The Future

The security efforts and the cost I have detailed is testimony to the ongoing need for transportation security funding in general and bus security funding in particular. There is a growing need for GPS systems, for updating security training materials, and for additional "train the trainers" seminars in more locations. And of course, there is the need for continual updating of security equipment in terminals and garages.

Moreover, as the nation continues to strengthen the segments of the transportation system, it will also need to place more emphasis on the coordination of security between transportation modes and the communications infrastructure needed to share sensitive information between government and private transportation assets. These expenses cannot be borne by the private bus industry and must be accomplished by the government working with the private transportation industry in a grant program similar to that contemplated by the Committee.

Conclusion

The private bus industry and the American Bus Association looks forward to working with you, Chairman DeFazio and you Chairman Brown, your subcommittees and the full Committee to ensure that our private bus transportation system, which is second to none in safety, reliability and low cost, retains its ranking when "security" is added to that list. Thank you for your time and I will be happy to answer any questions.

Peter J. Pantuso
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202.218.7229



The Honorable Peter DeFazio
Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
Attn: Peter Gould
Rayburn House Office Building Room 370a
Washington, D.C. 20515

Dear Chairman DeFazio:

This responds to your request for written responses to questions asked by Congressman Duncan and Congressman Brown of American Bus Association President and CEO, Peter J. Pantuso, in connection with the joint hearing of the Subcommittees on Highways and Transit and Railroads, Pipelines and Hazardous Materials on March 7, 2007.

Congressman Duncan asks: What is the single most effective improvement or activity for the over-the-road bus industry?

Response: Congressman Duncan asks that I provide one answer but unfortunately I will have to give two answers. The reason for this is that the intercity bus industry has two parts: carriers that provide intercity fixed route service and carriers that provide charter and tour service to the public. For the intercity fixed route operators such as Greyhound Lines and Peter Pan Bus Lines, the pressing security need and the most effective security improvement is the use of passenger screening methods (for example, passenger wand or the use of magnetometers) to check passengers and packages for prohibited items and weapons. For the charter and tour operators, ABA members have told us that the priority is training for operators' personnel in threat recognition, threat assessment and crisis management. The charter and tour operators are generally small business men and women without the wherewithal to employ a full time security manager. Those duties have generally been assigned to the company's safety manager or the owner himself. ABA has had success in training these managers allowing them to train others in their companies. This "train the trainers" system has resulted in an increase in security awareness and increased the number of trained security personnel in the industry.

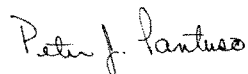
Congressman Duncan asks: How much money do you think should be allocated for over-the-road bus security grants?

Response: Since the attacks on 9/11, and beginning with Fiscal Year 2002, Congress has appropriated approximately \$50 million for security for the private bus industry. Over the same time period Congress has given the airline industry over \$18 billion for security. This inequality of effort is in face of the fact that each year the private bus industry carries approximately the same number of passengers as the nation's airlines, approximately six hundred million. Moreover, bus passenger facilities, such as parks, bus terminals, tourist destinations are as vulnerable as air facilities to attack. ABA is aware of this Committee's bill to provide funds for bus security (\$ 87 million) over the authorization period and the ABA applauds this effort and will work with the Congress to see this authorization to passage. One limiting factor on arriving at an equitable allocation for security funds is the ability of this small business industry to absorb a significant amount of money at one time. On balance I believe that a fair allocation, and one that could be used effectively, would be approximately one hundred million dollars over a three year period.

Congressman Brown asks two questions that are related to transit providers. The ABA does not represent publicly funded transit agencies. In light of that fact, I do not feel competent to voice any opinion on Congressman Brown's questions.

Thank you for the opportunity to testify before your subcommittee. I want to assure you that the American Bus Association will work with you on any transportation issue. Please contact me whenever you believe I or the ABA may be helpful.

Sincerely yours,



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GAO

United States Government Accountability Office

Testimony before Congressional
Subcommittees

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PASSENGER RAIL SECURITY

Federal Strategy and Enhanced Coordination Needed to Prioritize and Guide Security Efforts

Statement of Norman J. Rabkin, Managing Director
Homeland Security and Justice Issues



GAO-07-583T



Why GAO Did This Study

The four rail attacks in Europe and Asia since 2004, including the most recent in India, highlight the vulnerability of passenger rail and other surface transportation systems to terrorist attack and demonstrate the need for greater focus on securing these systems. This testimony is based primarily on GAO's September 2005 passenger rail security report and selected recent program updates. Specifically, it addresses (1) the extent to which the Department of Homeland Security (DHS) has assessed the risks facing the U.S. passenger rail system and developed a strategy based on risk assessments for securing all modes of transportation, including passenger rail, and (2) the actions that federal agencies have taken to enhance the security of the U.S. passenger rail system.

What GAO Recommends

GAO has previously recommended that the Transportation Security Administration (TSA) complete risk assessments, develop rail security standards based on best practices, and consider implementing practices used by foreign rail operators. DHS, the Department of Transportation (DOT), and Amtrak generally agreed with these recommendations.

www.gao.gov/cgi-bin/gettrpt?GAO-07-583T

To view the full product, including the scope and methodology, click on the link above. For more information, contact Norman J. Rabkin at (202) 512-8777 or rabkinn@gao.gov.

March 7, 2007

PASSENGER RAIL SECURITY

Federal Strategy and Enhanced Coordination Needed to Prioritize and Guide Security Efforts

What GAO Found

The DHS Office of Grants and Training (OGT) and TSA have begun to assess the risks facing the U.S. passenger rail system. However, GAO reported in September 2005 that TSA had not completed a comprehensive risk assessment of passenger rail. GAO found that, until TSA does so, it may be limited in its ability to prioritize passenger rail assets and help guide security investments. GAO also reported that DHS had begun, but not yet completed, a framework to help agencies and the private sector develop a consistent approach for analyzing and comparing risks among and across critical sectors. Since that time, TSA has reported taking additional steps to assess the risks to the passenger rail system. However, as of March 2, 2007, TSA has not issued the required Transportation Sector Specific Plan and supporting plans for passenger rail and other surface transportation modes, based on risk assessments. Until TSA does so, it lacks a clearly communicated strategy with goals and objectives for securing the transportation sector, including passenger rail.

After September 11, DOT initiated efforts to strengthen passenger rail security. TSA has also taken actions to strengthen rail security, including issuing security directives, testing security technologies, and issuing a proposed rule for passenger and freight rail security, among other efforts. However, federal and rail industry stakeholders have questioned the extent to which TSA's directives were based on industry best practices. OGT has also acted to help improve passenger rail security by, for example, providing funding for security enhancements to rail transit agencies and Amtrak through various grant programs. DHS and DOT have taken steps to better coordinate their respective rail security roles and responsibilities. In particular, DHS and DOT updated their memorandum of understanding to clarify their respective security roles and responsibilities for passenger rail.

Mr. Chairman, Madam Chairwoman, and Members of the Subcommittees:

Thank you for inviting me to participate in today's hearing on transit and rail security to discuss our recent work, primarily related to passenger rail security. Since its creation following the events of September 11, 2001, the Transportation Security Administration (TSA) has focused much of its efforts and resources on meeting legislative mandates to strengthen commercial aviation security. However, TSA has recently placed additional focus on securing surface modes of transportation, particularly in the area of passenger rail. Passenger rail systems, which include rail transit (commuter, heavy, and light rail) and intercity passenger rail, are inherently open and difficult to secure. One of the critical challenges facing federal agencies and the rail system operators they oversee or support is finding ways to protect these systems from potential terrorist attacks without compromising the accessibility and efficiency of rail travel. The four attacks in Europe and Asia since 2004, including the most recent in India, highlight the vulnerabilities of passenger rail systems and make clear that even when security precautions are put in place, these systems remain vulnerable to attack. Securing rail and surface transportation systems is a daunting task, requiring that the federal government develop a clearly communicated strategy, including goals and objectives, for strengthening the security of these systems. As part of that strategy, it is also critical to assess the risks facing these systems so that limited resources and security efforts can be prioritized to the areas of greatest need. Furthermore, because the responsibility for securing rail is shared between federal, state, and local governments and the private sector, it is critical that the federal government develop partnerships and coordinate its security efforts with transportation industry stakeholders.

As we have reported previously, the sheer number of stakeholders involved in securing passenger rail can sometimes lead to communication challenges, duplication of effort, and confusion about roles and responsibilities. Key Department of Homeland Security (DHS) stakeholders with critical roles include TSA, which is responsible for the security of all modes of transportation. In addition, the DHS Office of Grants and Training (OGT) provides grant funds to rail operators and conducts risk assessments for passenger rail agencies. Within the Department of Transportation (DOT), the Federal Transit Administration (FTA) and Federal Railroad Administration (FRA) have responsibilities for passenger rail safety and security. In addition, public and private passenger rail operators are responsible for securing their rail systems.

At the federal level, another challenge related to securing passenger rail systems involves allocating limited resources on the basis of risk. Within and among all modes of transportation, there is competition for resources, as federal, state, and local agencies and transportation operators seek to identify and invest in appropriate security measures to safeguard these systems while also investing in other capital and operational improvements. Moreover, given competing priorities and limited homeland security resources, difficult policy decisions have to be made by Congress and the executive branch to prioritize security efforts and direct resources to the areas of greatest risk within and among transportation modes and across other nationally critical sectors.

In this regard, to help federal decision makers determine how to best allocate limited resources, we have advocated, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) has recommended, and the Intelligence Reform and Terrorism Prevention Act of 2004 provides that a risk management approach be employed to guide decision-making related to homeland security resources. A risk management approach entails a continuous process of managing risks through a series of actions, including setting strategic goals and objectives, assessing and quantifying three key elements of risk—threat, vulnerability, and criticality or consequence—evaluating alternative security measures, selecting which measures to undertake, and implementing and monitoring those measures.

My testimony today focuses on the actions federal agencies have taken in developing and implementing security strategies and setting security priorities. In particular, my testimony highlights two key areas: (1) the extent to which DHS has assessed the risks facing the U.S. passenger rail system and developed a strategy based on risk assessments for securing all modes of transportation, including passenger rail and (2) the actions that federal agencies have taken to enhance the security of the U.S. passenger rail system. My comments today are primarily based on our September 2005 report addressing the security of the U.S. passenger rail system.¹ This report was based on work conducted at DHS, DOT, and Amtrak, as well as 32 passenger rail operators in the United States, and 13

¹GAO, *Passenger Rail Security: Enhanced Federal Leadership Needed to Prioritize and Guide Security Efforts*, GAO-05-861 (Washington, D.C.: Sept. 9, 2005).

passenger rail operators in seven European and Asian countries.² In addition, we recently obtained selected updates from DHS on its efforts to secure passenger rail systems. We conducted our work in accordance with generally accepted government auditing standards.

In Summary

DHS has made progress in assessing the risks facing the U.S. passenger rail system, but has not issued a plan based on those risk assessments for securing the entire transportation sector and supporting plans for each mode of surface transportation, as required by and in accordance with the National Infrastructure Protection Plan. The DHS OGT has developed and conducted risk assessments of passenger rail systems to identify rail assets that are vulnerable to attack, such as stations and bridges. TSA has also conducted a threat assessment of mass transit and passenger rail and has identified critical rail assets. However, we reported in September 2005 that TSA had not completed a comprehensive risk assessment of the passenger rail system. We concluded that, until TSA completed this effort, it is limited in its ability to prioritize passenger rail assets and help guide security investment decisions about protecting them. Since that time, TSA reported that it is working with rail transit agencies to update risk assessments that FTA and FRA conducted after September 11. TSA expects the 50 largest rail transit agencies to complete security self-assessments in early 2007. According to TSA, the agency is using the results of these assessments to set priorities, and has identified underground and underwater rail infrastructure and high-density passenger rail stations as assets at highest risk. In addition, at the time of our report, DHS had begun developing, but had not yet completed, a framework to help federal agencies and the private sector develop a consistent approach for analyzing and comparing risks to transportation and other critical sectors. As part of that framework, TSA is developing, but has not yet issued, a Transportation Sector Specific Plan (TSSP) and supporting plans for rail and other modes of surface transportation, as required by DHS's National Infrastructure Protection Plan and a December 2006 executive order. Until TSA issues these plans, it lacks a clearly communicated strategy with goals and objectives for securing the overall transportation sector, including passenger rail.

²We have been requested to conduct a follow-on review of passenger rail security and to review the security of other surface modes of transportation—including freight rail, commercial vehicles, and highway infrastructure. We expect to have all this work underway this year.

Before and after September 11, 2001, FTA and FRA undertook a number of initiatives to enhance passenger rail security, including conducting security readiness assessments, providing grants for emergency response drills and training, and implementing security awareness programs for rail passengers and employees. However, we reported in September 2005 that TSA's coordination efforts with DOT and industry stakeholders related to passenger rail security could be improved. In March 2004, after terrorist attacks on the rail system in Madrid, TSA issued security directives for passenger rail and mass transit. These directives were intended to establish standard protective measures for all passenger rail operators, including Amtrak. However, federal and rail industry stakeholders questioned the extent to which these directives were based on industry best practices and expressed confusion about how TSA would monitor compliance with the directives. Since we completed our work, TSA has taken additional actions to strengthen the security of the passenger rail system. For example, TSA has tested rail security technologies, developed training tools for rail workers, and issued a proposed rule in December 2006 on passenger and freight rail security, among other efforts. DHS and DOT have also taken steps to better coordinate on rail security roles and responsibilities. The memorandum of understanding between TSA and FTA in September 2005, and between TSA and FRA in September 2006, to delineate security-related roles and responsibilities.

In our September 2005 report on passenger rail security, we recommended, among other things, that TSA establish a plan with timelines for completing its methodology for conducting risk assessments and develop security standards that reflect industry best practices and can be measured and enforced. These actions should help ensure that the federal government has the information it needs to prioritize passenger rail assets based on risk, and evaluate, select, and implement measures to help the passenger rail operators protect their systems against terrorism. In addition, we recommended that the Secretary of DHS, in collaboration with DOT and the passenger rail industry, determine the feasibility, in a risk management context, of implementing certain security practices used by foreign rail operators. DHS, DOT, and Amtrak generally agreed with the report's recommendations. However, as of March 2, 2007, DHS has not provided a formal response indicating if or how it has implemented these recommendations.

Background

Overview of the Passenger Rail System

Each weekday, 11.3 million passengers in 35 metropolitan areas and 22 states use some form of rail transit (commuter, heavy, or light rail).³ Commuter rail systems typically operate on railroad tracks and provide regional service between a central city and adjacent suburbs. Commuter rail systems are traditionally associated with older industrial cities, such as Boston, New York, Philadelphia, and Chicago. Heavy rail systems—subway systems like New York City's transit system and Washington, D.C.'s Metro—typically operate on fixed rail lines within a metropolitan area and have the capacity for a heavy volume of traffic. Amtrak operates the nation's primary intercity passenger rail service over a 22,000-mile network, primarily over freight railroad tracks. Amtrak serves more than 500 stations (240 of which are staffed) in 46 states and the District of Columbia, and it carried more than 25 million passengers during fiscal year 2005.

Passenger Rail Systems Are Inherently Vulnerable to Terrorist Attacks

Certain characteristics of domestic and foreign passenger rail systems make them inherently vulnerable to terrorist attacks and therefore difficult to secure. By design, passenger rail systems are open, have multiple access points, are hubs serving multiple carriers, and, in some cases, have no barriers so that they can move large numbers of people quickly. In contrast, the U.S. commercial aviation system is housed in closed and controlled locations with few entry points. The openness of passenger rail systems can leave them vulnerable because operator personnel cannot completely monitor or control who enters or leaves the systems. In addition, other characteristics of some passenger rail systems—high ridership, expensive infrastructure, economic importance, and location (large metropolitan areas or tourist destinations)—also make them attractive targets for terrorists because of the potential for mass casualties and economic damage and disruption. Moreover, some of these same characteristics make passenger rail systems difficult to secure. For example, the numbers of riders that pass through a subway system—especially during peak hours—may make the sustained use of some security measures, such as metal detectors, difficult because they could

³The American Public Transportation Association compiled these fiscal year 2003 ridership data from FTA's National Transit Database. These are the most current data available. Rail transit systems in the District of Columbia and Puerto Rico are included in these statistics.

result in long lines that disrupt scheduled service. In addition, multiple access points along extended routes could make the cost of securing each location prohibitive. Balancing the potential economic impact of security enhancements with the benefits of such measures is a difficult challenge.

**Multiple Stakeholders
Share Responsibility for
Securing Passenger Rail
Systems**

Securing the nation's passenger rail systems is a shared responsibility requiring coordinated action on the part of federal, state, and local governments; the private sector; and rail passengers who ride these systems. Since the September 11 attacks, the role of federal agencies in securing the nation's transportation systems, including passenger rail, have continued to evolve. Prior to September 11, FTA and FRA, within DOT, were the primary federal entities involved in passenger rail security matters. In response to the attacks of September 11, Congress passed the Aviation and Transportation Security Act (ATSA), which created TSA within DOT and defined its primary responsibility as ensuring the security of all modes of transportation. Although its provisions focus primarily on aviation security, the act gives TSA regulatory authority for security over all transportation modes. With the passage of the Homeland Security Act of 2002, TSA was transferred, along with over 20 other agencies, to DHS.⁴ The Intelligence Reform and Terrorism Prevention Act of 2004 requires the Secretary of Homeland Security, working jointly with the Secretary of Transportation, to develop a National Strategy for Transportation Security and transportation modal security plans.⁵ TSA issued the National Strategy for Transportation Security in 2005. In addition, the DHS National Infrastructure Protection Plan (NIPP) required the development of a Transportation Sector Specific Plan (TSSP). In accordance with the NIPP, a December 2006 executive order required the Secretary of Homeland Security to develop a TSSP by December 31, 2006, and supporting plans for each mode of surface transportation not later than 90 days after completion of the TSSP.⁶ According to the NIPP, sector specific plans should, among other things, define the goals and objectives to secure the sector, assess the risks facing the sector, identify the critical assets and

⁴See Pub. L. No. 107-296 § 403, 116 Stat. 2135, 2178 (2002).

⁵Pub. L. No. 108-458, §4001, 118 Stat. 3638, 3710-12 (codified at 49 U.S.C. § 114(t), 44904(c)-(d)).

⁶On December 5, 2006, the President issued Executive Order 13416, which requires among other things, that DHS develop a comprehensive transportation systems sector specific plan, as defined in the NIPP, not later than December 31, 2006. See 71 Fed. Reg. 71,033 (Dec. 7, 2006).

infrastructure and develop programs to protect them, and develop security partnerships with industry stakeholders within the sector. As of March 2, 2007, TSA had not yet issued the TSSP or the supporting plans for each surface transportation mode.

Within DHS, OGT, formerly the Office for Domestic Preparedness (ODP), has become the federal source for security funding of passenger rail systems.⁷ OGT is the principal component of DHS responsible for preparing the United States against acts of terrorism and has primary responsibility within the executive branch for assisting and supporting DHS, in coordination with other directorates and entities outside of the department, in conducting risk analysis and risk management activities of state and local governments. In carrying out its mission, OGT provides training, funds for the purchase of equipment, support for the planning and execution of exercises, technical assistance, and other support to assist states, local jurisdictions, and the private sector to prevent, prepare for, and respond to acts of terrorism.

While TSA is the lead federal agency for ensuring the security of all transportation modes, FTA conducts safety and security activities, including training, research, technical assistance, and demonstration projects. In addition, FTA promotes safety and security through its grant-making authority. FRA has regulatory authority for rail safety over commuter rail operators and Amtrak, and employs over 400 rail inspectors that periodically monitor the implementation of safety and security plans at these systems.⁸

⁷OGT originated within the Department of Justice's Office of Justice Programs in 1998 as the Office for Domestic Preparedness (ODP). Pursuant to the Homeland Security Act of 2002, ODP was transferred to DHS in March 2003. See Pub. L. No. 107-296, § 403(5), 116 Stat. at 2178 (codified at 6 U.S.C. § 203(5)). In March 2004, the Secretary of Homeland Security consolidated ODP with the Office of State and Local Government Coordination to form the Office of State and Local Government Coordination and Preparedness (SLGCP). SLGCP was created to provide a "one-stop shop" for the numerous federal preparedness initiatives applicable to state and local governments. In 2005, SLGCP was incorporated under the Preparedness Directorate as OGT. Pursuant to the Department of Homeland Security Appropriations Act 2007, OGT is to be transferred, along with certain other components of the Preparedness Directorate, into the Federal Emergency Management Agency effective March 31, 2007. Pub. L. No. 109-295, § 611(13), 120 Stat. 1355, 1400 (2006).

⁸FRA administers and enforces federal laws and regulations that are designed to promote safety on railroads, such as track maintenance, inspection standards, equipment standards, and operating practices. FRA exercises jurisdiction over all areas of railroad safety pursuant to 49 U.S.C. § 20103.

Assessing and Managing Risks to Rail Infrastructure Using a Risk Management Approach

Risk management is a tool for informing policy makers' decisions about assessing risks, allocating resources, and taking actions under conditions of uncertainty. In recent years, the President, through Homeland Security Presidential Directives (HSPD), and Congress, through the Intelligence Reform and Terrorism Prevention Act of 2004, provided for federal agencies with homeland security responsibilities to apply risk-based principles to inform their decision making regarding allocating limited resources and prioritizing security activities. The 9/11 Commission recommended that the U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort.⁹ Further, the Secretary of DHS has made risk-based decision making a cornerstone of departmental policy. We have previously reported that a risk management approach can help to prioritize and focus the programs designed to combat terrorism. Risk management, as applied in the homeland security context, can help federal decision makers determine where and how to invest limited resources within and among the various modes of transportation.

The Homeland Security Act of 2002 also directed the department's Directorate of Information Analysis and Infrastructure Protection to use risk management principles in coordinating the nation's critical infrastructure protection efforts.¹⁰ This includes integrating relevant information, analysis, and vulnerability assessments to identify priorities for protective and support measures by the department, other federal agencies, state and local government agencies and authorities, the private sector, and other entities. Homeland Security Presidential Directive 7 and the Intelligence Reform and Terrorism Prevention Act of 2004 further define and establish critical infrastructure protection responsibilities for DHS and those federal agencies given responsibility for particular industry

⁹National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, D.C.: 2004). The 9/11 Commission was an independent, bipartisan commission created in late 2002, to prepare a complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission was also mandated to provide recommendations designed to guard against future attacks.

¹⁰In 2006, DHS reorganized its Information Analysis and Infrastructure Protection division. The functions of the Directorate of Information Analysis and Infrastructure Protection were moved to the Office of Intelligence and Analysis and Office of Infrastructure Protection.

sectors, such as transportation. In June 2006, DHS issued the NIPP, which named TSA as the primary federal agency responsible for coordinating critical infrastructure protection efforts within the transportation sector.¹¹ In fulfilling its responsibilities under the NIPP, TSA must conduct and facilitate risk assessments in order to identify, prioritize, and coordinate the protection of critical transportation systems infrastructure, as well as develop risk-based priorities for the transportation sector.

To provide guidance to agency decision makers, we have created a risk management framework, which is intended to be a starting point for applying risk-based principles. Our risk management framework entails a continuous process of managing risk through a series of actions, including setting strategic goals and objectives, assessing risk, evaluating alternatives, selecting initiatives to undertake, and implementing and monitoring those initiatives. DHS's NIPP describes a risk management process that closely mirrors our risk management framework.

Setting strategic goals, objectives, and constraints is a key first step in applying risk management principles and helps to ensure that management decisions are focused on achieving a purpose. These decisions should take place in the context of an agency's strategic plan that includes goals and objectives that are clear and concise. These goals and objectives should identify resource issues and external factors to achieving the goals. Further, the goals and objectives of an agency should link to a department's overall strategic plan. The ability to achieve strategic goals depends, in part, on how well an agency manages risk. The agency's strategic plan should address risk-related issues that are central to the agency's overall mission.

Risk assessment, an important element of a risk-based approach, helps decision makers identify and evaluate potential risks so that countermeasures can be designed and implemented to prevent or mitigate the effects of the risks. Risk assessment is a qualitative and/or quantitative determination of the likelihood of an adverse event occurring and the severity, or impact, of its consequences. Risk assessment in a homeland security application often involves assessing three key elements—threat, vulnerability, and criticality or consequence. A threat assessment identifies

¹¹HSPD-7 directed DOT and DHS to collaborate on all matters relating to transportation security and transportation infrastructure protection. In 2003, DHS designated TSA as the lead agency for addressing HSPD-7 as it relates to securing the nation's transportation sector.

and evaluates potential threats on the basis of factors such as capabilities, intentions, and past activities. A vulnerability assessment identifies weaknesses that may be exploited by identified threats and suggests options to address those weaknesses. A criticality or consequence assessment evaluates and prioritizes assets and functions in terms of specific criteria, such as their importance to public safety and the economy, as a basis for identifying which structures or processes are relatively more important to protect from attack. Information from these three assessments contributes to an overall risk assessment that characterizes risks on a scale such as high, medium, or low and provides input for evaluating alternatives and management prioritization of security initiatives. The risk assessment element in the overall risk management cycle may be the largest change from standard management steps and can be important to informing the remaining steps of the cycle.

DHS Has Taken Steps to Assess Risk to Passenger Rail Systems, but Has Not Issued a Strategy for Securing the Transportation Sector

DHS has made progress in assessing the risks facing the U.S. passenger rail system, but has not issued a plan based on those risk assessments for securing the entire transportation sector and supporting plans for each mode of transportation, including passenger rail. The DHS OGT developed and implemented a risk assessment tool to help passenger rail operators better respond to terrorist attacks and prioritize security measures. Passenger rail operators must have completed a risk assessment to be eligible for financial assistance through the fiscal year 2007 OGT Transit Security Grant Program, which includes funding for passenger rail. To receive grant funding, rail operators are also required to have a security and emergency preparedness plan that identifies how the operator intends to respond to security gaps identified by risk assessments. As of February 2007, OGT had completed or planned to conduct risk assessments of most passenger rail operators. According to rail operators, OGT's risk assessment process enabled them to prioritize investments on the basis of risk and allowed them to target and allocate resources towards security measures that will have the greatest impact on reducing risk across their rail systems.

Further, we reported in September 2005 that TSA had not completed a comprehensive risk assessment of the entire passenger rail system. TSA had begun to assess risks to the passenger rail system, including completing an overall threat assessment for both mass transit and passenger and freight rail modes. TSA also conducted criticality assessments of nearly 700 passenger rail stations and had begun conducting assessments for other passenger rail assets such as bridges and tunnels. TSA reported that it planned to rely on asset criticality

rankings to prioritize which assets it would focus on in conducting vulnerability assessments to determine which passenger rail assets are vulnerable to attack. For assets that are deemed to be less critical, TSA has developed a software tool that it has made available to passenger rail and other transportation operators for them to use on a voluntary basis to assess the vulnerability of their assets. We reported that, until all three assessments of passenger rail systems—threat, criticality, and vulnerability—have been completed, and until TSA determined how to use the results of these assessments to analyze and characterize the level of risk (high, medium, or low), it will be difficult to prioritize passenger rail assets and guide investment decisions about protecting them.

More recently, in January 2007, TSA reported taking additional actions to assess the risks facing the U.S. passenger rail system. For example, TSA reported that its surface transportation security inspectors are working with rail transit agencies to update risk assessments that FTA and FRA conducted after September 11, and is also conducting additional security assessments of rail transit agencies. TSA also expected that the 50 largest rail transit agencies would complete security self assessments in early 2007. According to TSA, the agency is using the results of these assessments to set priorities and identify baseline security standards for the passenger rail industry. For example, in January 2007 the agency reported that it has identified underground and underwater rail infrastructure and high-density passenger rail stations as the critical assets most at risk. According to TSA, the agency prioritized a list of the underwater rail tunnels deemed to be at highest risk, and plans to conduct assessments of high-risk rail tunnels.

We also reported in September 2005 that DHS was developing, but had not yet completed, a framework intended to help TSA, OGT, and other federal agencies work with their stakeholders to assess risk. This framework is intended to help the private sector and state and local governments develop a consistent approach to analyzing risk and vulnerability across infrastructure types and across entire economic sectors, develop consistent terminology, and foster consistent results. The framework is also intended to enable a federal-level assessment of risk in general, and comparisons among risks, for purposes of resource allocation and response planning. DHS reported that this framework will provide overarching guidance to sector-specific agencies on how various risk assessment methodologies may be used to analyze, normalize, and prioritize risk within and among sectors. We plan to assess DHS's and DOT's progress in enhancing their risk assessment efforts during our follow-on review of passenger rail security.

Finalizing a methodology for assessing risk to passenger rail and other transportation modes and conducting risk assessments to determine the areas of greatest need are key steps required in developing a strategy for securing the overall transportation sector and each mode of transportation individually. However, TSA has not issued the required TSSP and supporting plans for securing each mode of transportation. According to TSA, the TSSP and supporting modal plans are in draft, but must be reviewed by DHS and the White House Homeland Security Council before they can be finalized. Until TSA issues the TSSP and modal plans, the agency lacks a clearly communicated strategy with goals and objectives for securing the overall transportation sector, including passenger rail.

Federal Agencies Have Taken Actions to Enhance Passenger Rail Security

In addition to ongoing initiatives to enhance passenger rail security conducted by FTA and FRA before and after September 11, 2001, TSA issued security directives to passenger rail operators after the March 2004 terrorist attacks on the rail system in Madrid. However, federal and rail industry stakeholders have questioned the extent to which these directives were based on industry best practices and expressed confusion about how TSA would monitor compliance with the directives. Since we completed our work on passenger rail security, TSA has reported taking additional actions to strengthen the security of the passenger rail system. For example, TSA tested rail security technologies, developed training tools for rail workers, and issued a proposed rule in December 2006 regarding passenger and freight rail security, among other efforts. OGT has also acted to help improve passenger rail security by, for example, providing funding for security enhancements to rail transit agencies and Amtrak through various grant programs. DHS and DOT have taken steps to better coordinate their rail security roles and responsibilities. In particular, the memorandum of understanding between DHS and DOT was updated to include specific agreements between TSA and FTA in September 2005 and between TSA and FRA in September 2006 to delineate security-related roles and responsibilities, among other things, for passenger rail and mass transit.

DOT Agencies Led Initial Efforts to Enhance Passenger Rail Security

Prior to the creation of TSA in November 2001, FTA and FRA, within DOT, were primarily responsible for the security of passenger rail systems. These agencies undertook a number of initiatives to enhance the security of passenger rail systems after the September 11 attacks that are still in place today. Specifically, FTA launched a transit security initiative in 2002 that included security readiness assessments, technical assistance, grants for emergency response drills, and training. FTA also instituted the Transit

Watch campaign in 2003—a nationwide safety and security awareness program designed to encourage the participation of transit passengers and employees in maintaining a safe transit environment. The program provides information and instructions to transit passengers and employees so that they know what to do and whom to contact in the event of an emergency in a transit setting. FTA plans to continue this initiative, in partnership with TSA and OGT, and offer additional security awareness materials that address unattended bags and emergency evacuation procedures for transit agencies. In addition, in November 2003, FTA issued its Top 20 Security Program Action Items for Transit Agencies, which recommended measures for passenger rail operators to include in their security programs to improve both security and emergency preparedness. FTA has also used research and development funds to develop guidance for security design strategies to reduce the vulnerability of transit systems to acts of terrorism. Further, in November 2004, FTA provided rail operators with security considerations for transportation infrastructure. This guidance provides recommendations intended to help operators deter and minimize attacks against their facilities, riders, and employees by incorporating security features into the design of rail infrastructure.

FRA has also taken a number of actions to enhance passenger rail security since September 11, 2001. For example, it has assisted commuter railroads in developing security plans, reviewed Amtrak's security plans, and helped fund FTA security readiness assessments for commuter railroads. In the wake of the Madrid terrorist bombings in March 2004, nearly 200 FRA inspectors, in cooperation with TSA, conducted inspections of each of 18 commuter railroads and Amtrak to determine what additional security measures had been put into place to prevent a similar occurrence in the United States. FRA also conducted research and development projects related to passenger rail security. These projects included rail infrastructure security and trespasser monitoring systems and passenger screening and manifest projects, including explosives detection. Although FTA and FRA now play a supporting role in transportation security matters since the creation of TSA, they remain important partners in the federal government's efforts to strengthen rail security, given their role in funding and regulating the safety of passenger rail systems. Moreover, as TSA moves ahead with its passenger rail security initiatives, FTA and FRA are continuing their passenger rail security efforts.

TSA Issued Rail Security Directives, but Faces Challenges Related to Compliance and Enforcement

In May 2004, TSA issued security directives to the passenger rail industry to establish standard security measures for all passenger rail operators, including Amtrak.¹² However, as we previously reported, it was unclear how TSA developed the requirements in the directives, how TSA planned to monitor and ensure compliance, how rail operators were to implement the measures, and which entities were responsible for the directives' implementation. According to TSA, the directives were based upon FTA and American Public Transportation Association best practices for rail security. Specifically, TSA stated that it consulted a list of the top 20 actions FTA identified that rail operators can take to strengthen security. While some of the directives' requirements correlate to information contained in the FTA guidance, the source for many of the requirements is unclear. Amtrak and FRA officials also raised concerns about some of the directives. For example, FRA officials stated that current FRA safety regulations requiring engineer compartment doors be kept unlocked to facilitate emergency escapes¹³ conflicts with the TSA security directive requirement that doors equipped with locking mechanisms be kept locked. Other passenger rail operators we spoke with during our review stated that TSA did not adequately consult with the rail industry before developing and issuing these directives. In January 2007, TSA stated that it recognizes the need to closely partner with the passenger rail industry to develop security standards and directives.

As we reported in September 2005, rail operators are required to allow TSA and DHS to perform inspections, evaluations, or tests based on execution of the directives at any time or location. However, we reported that some passenger rail operators have expressed confusion and concern about the role of TSA's inspectors and the potential that TSA inspections could be duplicative of other federal and state rail inspections, such as FRA inspections. Since we issued our report, TSA officials reported that the agency has hired 100 surface transportation inspectors, whose stated mission is to, among other duties, monitor and enforce compliance with TSA's rail security directives. According to TSA, since the initial deployment of surface inspectors, these inspectors have developed relationships with security officials in passenger rail and transit systems, coordinated access to operations centers, participated in emergency exercises, and provided assistance in enhancing security. We will continue

¹²TSA issues security related regulations and directives pursuant to its 49 U.S.C. § 114(l) rulemaking authority.

¹³See 49 C.F.R. § 238.235.

to assess TSA's efforts to enforce compliance with rail security requirements, including those in the December 2006 proposed rule on rail security, during our follow-on review of passenger rail security.

TSA Has Reported Taking Additional Actions to Strengthen Passenger Rail Security

In January 2007, TSA identified additional actions they had taken to strengthen passenger rail security. We have not verified or evaluated these actions. These actions include:

National explosive canine detection teams: Since late 2005, TSA reported that it has trained and deployed 53 canine teams to 13 mass transit systems to help detect explosives in the passenger rail system and serve as a deterrent to potential terrorists.

Visible Intermodal Prevention and Response Teams: This program is intended to provide law enforcement, canines, and inspection teams to mass transit and passenger rail systems to deter and detect potential terrorist actions. Since the program's inception in December 2005, TSA reported conducting more than 25 exercises at mass transit and passenger rail systems throughout the nation.

Mass Transit and Passenger Rail Security Information Sharing Network: According to TSA, the agency initiated this program in August 2005 to develop information sharing and dissemination processes regarding passenger rail and mass transit security across the federal government, state and local governments, and rail operators.

National Transit Resource Center: TSA officials stated that they are working with FTA and DHS OGT to develop this center, which will provide transit agencies nationwide with pertinent information related to transit security, including recent suspicious activities, promising security practices, new security technologies, and other information.

National Security Awareness Training Program for Railroad Employees: TSA officials stated that the agency has contracted to develop and distribute computer-based training for passenger rail, rail transit, and freight rail employees. The training will include information on identifying security threats, observing and reporting suspicious activities and objects, mitigating security incidents, and other related information. According to TSA, the training will be distributed to all passenger and freight rail systems.

Transit Terrorist Tool and Tactics: This training course is funded through the Transit Security Grant Program and teaches transit employees how to prevent and respond to a chemical, biological, radiological, nuclear, or explosive attack. According to TSA, this course was offered for the first time during the fall of 2006.

National Tunnel Security Initiative: This DHS and DOT initiative aims to identify and assess risks to underwater tunnels, prioritize security funding to the most critical areas, and develop technologies to better secure underwater tunnels. According to TSA, this initiative has identified 29 critical underwater rail transit tunnels.

DHS and TSA have also sought to enhance passenger rail security by conducting research on technologies related to screening passengers and checked baggage in the passenger rail environment. For example, TSA conducted a Transit and Rail Inspection Pilot, a \$1.5 million effort to test the feasibility of using existing and emerging technologies to screen passengers, carry-on items, checked baggage, cargo, and parcels for explosives. According to TSA, the agency completed this pilot in July 2004. TSA officials told us that based upon preliminary analyses, the screening technologies and processes tested would be very difficult to implement on heavily used passenger rail systems because these systems carry high volumes of passengers and have multiple points of entry. However, TSA officials added that the screening processes used in the pilot may be useful on certain long-distance intercity train routes, which make fewer stops. Further, TSA officials stated that screening could be used either randomly or for all passengers during certain high-risk events or in areas where a particular terrorist threat is known to exist. For example, screening technology similar to that used in the pilot was used by TSA to screen certain passengers and belongings in Boston and New York rail stations during the 2004 Democratic and Republican national conventions. According to TSA, the agency is also researching and developing other passenger rail security technologies, including closed circuit television systems that can detect suspicious behavior, mobile passenger screening checkpoints to be used at rail stations, bomb resistant trash cans, and explosive detection equipment for use in the rail environment. Finally, TSA recently reported that the DHS Science and Technology (S&T) Directorate conducted a rail security pilot, which tested the effectiveness of explosive detection technologies in partnership with the Port Authority of New York and New Jersey.

In December 2006, TSA issued a proposed rule on passenger and freight rail security requirements. TSA's proposed rule would require that

passenger and freight rail operators, certain facilities that ship or receive hazardous materials by rail, and rail transit systems take the following actions:

- Designate a rail security coordinator to be available to TSA on a 24-hour, 7-day-a-week basis to serve as the primary contact for the receipt of intelligence and other security related information.
- Immediately report incidents, potential threats, and security concerns to TSA.
- Allow TSA and DHS officials to enter and conduct inspections, test, and perform other duties within their rail systems.
- Provide TSA, upon request, with the location and shipping information of rail cars that contain a specific category and quantity of hazardous materials within 1 hour of receiving the request from TSA.
- Provide for a secure chain of custody and control of rail cars containing a specified quantity and type of hazardous material.

The period for public comment on the proposed rule was scheduled to close in February 2007. TSA plans to review these comments and issue a final rule in the future.

OGT Has Used Various Grant Programs to Fund Passenger Rail Security Since 2003

OGT has used various programs to fund passenger rail security since 2003. Through the Urban Area Security Initiative (UASI) grant program, OGT has provided grants to urban areas to help enhance their overall security and preparedness level to prevent, respond to, and recover from acts of terrorism. In 2003 and 2004, \$65 million and \$50 million, respectively, were provided to rail transit agencies through the UASI program. In addition, the DHS Appropriations Act 2005 appropriated \$150 million for rail transit, intercity passenger rail, freight rail, and transit security grants.¹⁴ OGT used this funding to build on the work under way through the UASI program and create and administer new programs focused specifically on transportation security, including the Transit Security Grant Program and the Intercity Passenger Rail Security Grant Program. These programs provided financial assistance to address security preparedness and enhancements for passenger rail and transit systems. During fiscal year 2006, OGT provided \$110 million to passenger rail transit agencies through the Transit Security Grant Program and about \$7 million to Amtrak

¹⁴Pub. L. No. 108-334, 118 Stat. 1298, 1309 (2004). The fiscal year 2006 DHS appropriations act also appropriated \$150 million and the fiscal year 2007 DHS appropriations act appropriated \$175 million for the same purpose. Pub. L. No. 109-90, 119 Stat. 2064, 2076 (2005); Pub. L. No. 109-295, 120 Stat. 1355, 1369 (2006).

through the Intercity Passenger Rail Security Grant Program. During fiscal year 2007, OGT plans to distribute \$156 million for rail and bus security grants and \$8 million to Amtrak.

In January 2007, OGT reported that the Intercity Passenger Rail Security Program had been incorporated into the Transit Security Grant Program. The President's fiscal year 2008 budget request includes \$175 million for the Transit Security Grant Program. According to budget documents, grants will be awarded to rail transit agencies and Amtrak for preparedness activities related to terrorism and other incidents on the basis of risk and effectiveness.¹⁵

Although OGT has distributed hundreds of millions of dollars in grants to improve passenger rail security, issues have surfaced about the grant process.

- **Changes to grant requirements:** As DHS works to refine its risk assessment methodologies, develop better means of assessing proposed investments using grant funds, and align grant guidance with the implementation of broader emergency preparedness goals, such as implementation of the National Preparedness Goal, it has annually made changes to the guidance for the various grants it administers. These changes include changes in the eligibility for grants. As a result of these annual changes, awardees and potential grant recipients must annually review and understand new information on the requirements for grant applications including justification of their proposed use of grant funds.
- **Allowable uses of grants:** Funds awarded through the Transit Security Grant Program can be used to supplement funds received from other grant programs. However, allowable uses are not clearly defined. For example, Transit Security Grant Program funds

¹⁵The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users provided that DOT and DHS shall jointly issue final regulations to establish the characteristics of and requirements for public transportation security grants, including funding priorities, eligible activities, methods for awarding grants, and limitations on administrative expenses. See Pub. L. No. 109-59, § 3028(c), 119 Stat. 1144, 1624-25 (2005). According to language contained in the draft proposed rule, the rule will provide for interagency coordination between DHS and FTA with regard to the transit security grant program.

can be used to create canine teams but cannot be used to maintain these teams—that is, the grant funds cannot be used for food, medical care, and other such maintenance costs for the dogs on the team. Whether other grant funds could be used for such maintenance costs would be governed by the terms of those grants. Grant recipients have expressed a need for clear guidance on the allowable use of grants and how they can combine funds from more than one grant to fund and implement specific projects.

**DHS and DOT Have
Worked to Improve
Coordination on Passenger
Rail Security**

With multiple DHS and DOT stakeholders involved in securing the U.S. passenger rail system and inherent relationships between security and safety, the need to improve coordination between the two agencies has been a consistent theme in our prior work in this area. In response to a previous recommendation we made,¹⁶ DHS and DOT signed a memorandum of understanding (MOU) in September 2004 to develop procedures by which the two departments could improve their cooperation and coordination for promoting the safe, secure, and efficient movement of people and goods throughout the transportation system. The MOU defines broad areas of responsibility for each department. For example, it states that DHS, in consultation with DOT and affected stakeholders, will identify, prioritize, and coordinate the protection of critical infrastructure. The MOU acknowledges that DHS has primary responsibility for transportation security, with DOT playing a supporting role by providing technical assistance and helping DHS implement security policies.

The MOU between DHS and DOT represents an overall framework for cooperation that is to be supplemented by additional signed agreements, or annexes, between the departments. These annexes are to delineate the specific security-related roles, responsibilities, resources, and commitments for mass transit, rail, research and development, and other matters.¹⁷ TSA signed annexes to the MOU with FRA in September 2006 and FTA in September 2005. These annexes describe each agency's roles and responsibilities for passenger rail security. These annexes also describe how TSA and these DOT agencies will coordinate security-related efforts, avoid duplication of efforts, and improve coordination and

¹⁶GAO, *Transportation Security: Federal Action Needed to Help Address Security Challenges*, GAO-03-843 (Washington, D.C.: June 2003).

¹⁷We did not examine the appropriateness or assess the efficiency of the how DHS and DOT have divided and assigned security-related roles in the MOU or annexes.

communication with industry stakeholders. For example, the annex signed by FTA includes a provision that FTA, TSA, and OGT will communicate with each other about funding for transportation security projects in order to present a coordinated position on transportation security funding and to avoid duplicative funding requests. Table 1 describes some areas of responsibility outlined in the annexes where DHS and DOT agencies play different but coordinated roles.

Table 1: Examples of Responsibilities Divided between DHS and DOT as Outlined in MOU Annexes

Area of responsibility	DHS (TSA) role	DOT (FRA and FTA) role
Rail inspections	TSA inspectors are to take the lead in conducting security inspections, referring significant safety problems they observe to FRA.	FRA inspectors are to take the lead in conducting safety inspections, referring significant security problems they observe to TSA. FRA inspectors are to support TSA inspectors if needed.
Use of personnel	DHS may request in writing the use of FRA personnel and other assets, as warranted. TSA officials can be detailed to FTA, as appropriate.	FRA is to respond as soon as practicable to DHS requests for use of FRA resources. FTA officials can be detailed to TSA, as appropriate.

Table 1: Examples of Responsibilities Divided between DHS and DOT as Outlined in MOU Annexes

Assessments and resulting measures	DHS is the lead agency responsible for assessing risk to passenger rail systems.	FTA may review security-related issues on FTA-funded transit projects and is to invite DHS to participate.
	DHS is to share risk assessment results with FTA to ensure FTA's training and technical assistance programs conform to DHS policy.	FTA is to share the results of the limited number of vulnerability assessments it conducts with DHS.
	TSA is to consult with FRA in the development of security procedures that impact rail facilities or operations and ensure they do not conflict with safety requirements.	FRA is to provide TSA with data from security inspections and other reviews.
Threat information	DHS is to communicate relevant intelligence information, including threats and warnings, and changes to the national threat condition to DOT and rail industry stakeholders in a timely manner.	DOT is to communicate relevant intelligence information, including threats and warnings, to DHS.
Protective measures	DHS is to consult with DOT before disseminating security requirements.	DOT is to consult with DHS before disseminating safety requirements, including safety measures with security implications.
Public awareness	DHS is to support FTA's security awareness program, Transit Watch, with available funds.	FTA is to implement and support Transit Watch and coordinate this program with DHS's Citizen Corps, a public participation program.

Table 1: Examples of Responsibilities Divided between DHS and DOT as Outlined in MOU Annexes

Emergency drills	DHS is to develop guidance on the use of its Transit Security Grant Program to fund emergency response drills for transit agencies.	FTA is to work with DHS in developing the guidance for the Transit Security Grant Program.
Emergency responders forums	DHS, subject to funding availability, is to work with FTA to jointly hold emergency responder forums, a program known as Connecting Communities.	FTA, which initiated Connecting Communities, is to work with DHS to jointly hold forums and coordinate with DHS's Citizen Corps program.

Source: GAO analysis of the MOU and related annexes.

DHS and DOT officials have stated that the MOU and its related annexes have improved how the two departments' agencies work together, providing for close cooperation and increased efficiency and thereby benefiting the passenger rail industry and the public. For example, FTA officials said that using the MOU annex as a blueprint, they established an Executive Steering Committee with TSA and OGT to oversee eight project management teams implementing the tasks outlined in the MOU annex. The teams' efforts address issues such as risk assessment and technical assistance, annual planning and grant guidance, and standards and research, among other areas.

Although the execution of the MOU and related annexes is an important step forward, additional efforts to maintain and improve coordination will be required as both departments move forward with existing and new initiatives. For example, as we reported in July 2006, after TSA hired 100 surface transportation inspectors, officials from state-designated agencies that oversee rail transit safety and security under FTA's State Safety Oversight program told us that they did not have a clear picture of who was responsible for overseeing transit security issues.¹⁸ Some of these officials expressed concern that TSA's rail inspectors would be duplicating their role in overseeing transit security. Similarly, officials from rail transit

¹⁸GAO, *Rail Transit: Additional Federal Leadership Would Enhance FTA's State Safety Oversight Program*, GAO-06-821 (Washington, D.C.: July 26, 2006).

agencies said they were unsure of lines of responsibility for transit security oversight and said they were confused about what standards they would be required to meet. For example, while state oversight agencies are free to create their own standards, TSA issued rail security directives in May 2004 and has authority to undertake regulatory actions that impose requirements upon transit agencies. To reduce confusion among transit and oversight agencies, we recommended last year that TSA 1) coordinate with FTA to clearly articulate to state oversight agencies and transit agencies the roles and responsibilities TSA develops for its rail inspectors, and 2) work with state oversight agencies to coordinate their security audits whenever possible and include FTA in this communication to help ensure effective coordination with these agencies. FTA and TSA officials stated that they are working to determine how to implement the recommendations.

Conclusions

In conclusion, the rail attacks in Europe and Asia highlight the inherent vulnerability of passenger rail and other surface transportation systems to terrorist attack. Moreover, securing rail and other surface transportation systems is a daunting task, requiring the federal government develop clear strategies that are based on an assessment of the risks to the security of the systems, including goals and objectives, for strengthening the security of these systems. Since our September 2005 report, DHS components have taken steps to assess the risks to the passenger rail system, such as working with rail operators to update prior risk assessments and facilitating rail operator security self assessments. According to TSA, the agency plans to use these assessment results to set priorities for securing rail assets deemed most at risk, such as underground and underwater rail infrastructure and high density passenger rail stations. A comprehensive assessment of the risks facing the transportation sector and each mode, including passenger rail, will be a key component of the TSSP and supporting plans for each mode of transportation. Until TSA issues these plans, however, the agency lacks a clearly communicated strategy with goals and objectives for securing the overall transportation sector and each mode of transportation, including passenger rail. As TSA moves forward to issue the TSSP and supporting plans for each mode of transportation, it will be important that the agency articulate its strategy for securing rail and other modes to those government agencies and industry stakeholders that share the responsibility for securing these systems.

With the execution of the MOU and related annexes, DHS and DOT have taken important steps forward in improving coordination among the

federal entities involved in passenger rail security matters. The execution of the MOUs and related annexes is not a panacea, however. Effective and continued coordination between the two departments and periodic reassessment of roles and responsibilities will be important as both move forward in implementing existing programs and new security initiatives. We will continue to assess DHS and DOT's efforts to secure the U.S. passenger rail system during follow-on work to be initiated later this year.

Mr. Chairman and Madam Chairwoman, this concludes my statement. I would be pleased to answer any questions that you or other members of the Subcommittees may have at this time.

Contact Information

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**Response to Supplemental Questions
for the
Subcommittee on Highways and Transit and the Subcommittee on Railroads,
Pipelines and Hazardous Materials
U.S. House of Representatives
Joint Hearing on
Transit and Rail Security
March 7, 2007**

FTA's Role in Accessing the Needs of the Transit System: Executive Order 13416 calls for the "implementation of a comprehensive, coordinated, efficient security program." It also makes clear that the Secretary of Homeland Security is the principal federal official responsible for infrastructure protection for surface transportation.

What do you see as FTA's appropriate role in this process? Can you also comment on how best the needs of transit providers can be served under this system?

Although the Department of Homeland Security (DHS) is the lead federal agency in securing all modes of transportation, including transit systems, the Federal Transit Administration (FTA) has served, and will likely continue to serve an important role in securing our nation's transit systems. Before and after September 11, 2001, FTA undertook a number of initiatives to enhance passenger rail security, including conducting security readiness assessments, providing grants for emergency response drills and training, and implementing security awareness programs for rail passengers and employees. As part of its responsibility to provide federal support for public transportation, FTA continues to serve as a resource to the transit community by, for example, providing security-related guidance and training. Further, according to the public transportation security annex to the memorandum of understanding (MOU) between DHS and the Department of Transportation (DOT), FTA is responsible for providing technical assistance and helping the Transportation Security Administration (TSA) implement security policies. Specific actions for FTA outlined in the MOU include sharing the results of its security assessments with the appropriate DHS officials, consulting with DHS in the development of security standards for transit systems, and providing input in the development of TSA security regulations, among other actions. This year, GAO will begin an updated review of passenger rail security efforts, which will include examination of how DHS and DOT agencies are working together to secure passenger rail.

TSA's May 2004 Security Directive: In light of the confusion within the industry regarding the source of this security directive, do you believe more coordination between TSA and FTA in advance of the issuance of the directive would have resolved some of the questions within the industry and ensured greater compliance and implementation?

Yes, we believe that more coordination between the two agencies in advance of the issuance of the security directives would have resulted in a better outcome for industry and recommended that TSA collaborate with DOT on setting future standards. Following our review of passenger rail security in 2005, we concluded that TSA's security directives—while a well-intentioned effort to take swift action in response to a current threat—may not provide industry with baseline security standards based on industry best practices because TSA issued the directives with limited input and review by rail industry and federal stakeholders. We also said that collaborating with rail industry stakeholders to develop security standards is an important starting point for strengthening the security of passenger rail systems. We noted that the MOU signed between DHS and DOT would help ensure that federal activities to secure rail systems are coordinated and that stakeholders are involved in their development and implementation to the extent possible. The subsequent public transportation annex to the MOU, signed between TSA and FTA in September 2005, provides additional assurance that coordination between DHS and DOT may be improving.

In order to ensure that future rail security directives are enforceable, transparent, and feasible, we recommended that the Secretary of DHS direct the Assistant Secretary of TSA, in collaboration with DOT and the passenger rail industry, to develop security standards that reflect industry best practices and can be measured, monitored, and enforced by TSA rail inspectors and, if appropriate, by rail asset owners. This could be accomplished by using the rule-making process, with notice in the Federal Register and an opportunity for interested stakeholders to comment, to promulgate long-term regulations that incorporate these standards.

Allocation of Limited Federal Resources: Can you comment on this suggestion that a greater role for FTA in the grant administration and monitoring process can provide cost savings and benefits over the current process?

We have not examined using FTA in this capacity. However, we would note that Congress and the President, through the Intelligence Reform and Terrorism Prevention Act of 2004 and Executive Order 13416, have specifically designated DHS as the lead agency with responsibility for securing transportation systems. Part of this responsibility includes completing the Transportation Security Specific Plan (TSSP), which should include a comprehensive assessment of the risks facing the transportation sector and each mode, including passenger rail. A risk management approach is needed in order to best allocate limited resources between the different transportation modes. According to TSA, the TSSP and supporting modal plans are drafted, but must be reviewed by DHS and the White House Homeland Security Council before they can be finalized.

Although FTA has the existing grant structures and experience to possibly distribute funds quicker, DHS has been tasked with conducting the appropriate risk assessments to be able to best allocate funds between different modes and within modes to various transportation providers based on risk. The MOU between DHS and DOT recognizes this collaborative opportunity and therefore states that the departments will leverage each other's resources and capabilities.

Mr. Rabkin, what single security measure do you believe is the most effective in preventing, and responding to, terrorist attacks on transit and rail systems?

Because security cannot be guaranteed, it is critical that a risk management approach is adopted. Using a risk management approach will help ensure that finite resources are dedicated to security activities that have the highest priority or greatest benefit. For example, a part of the risk management approach is evaluating security alternatives—that is, determining what actions may be needed to address identified risks, the associated costs of taking these actions, and any resulting benefits. In addition to helping to choose the best course of action in securing the rail system, a risk management approach will allow the government to compare risks across different transportation modes, prioritize them, and then allocate resources accordingly.

Mr. Rabkin, SAFETEA-LU required DOT and DHS to issue joint regulations for public transportation security grants, including funding priorities, eligible activities, methods for awarding grants, and limitations on administrative expenses. Do you know the current status of this rulemaking?

As of March 5, 2007, the final rule had not been issued.

Mr. Rabkin, would you describe the Department of Transportation and Department of Homeland Security's relationship in the areas of transit and rail security to be coordinated and cooperative?

The need to improve coordination between the two agencies has been a consistent theme in our prior work in this area. In response to a previous recommendation we made, DHS and DOT signed an MOU in September 2004 to develop procedures by which the two departments could improve their cooperation and coordination for promoting the safe, secure, and efficient movement of people and goods throughout the transportation system. The MOU between DHS and DOT represents an overall framework for cooperation that is to be supplemented by additional signed agreements, or annexes, between the departments. These annexes are to delineate the specific security-related roles, responsibilities, resources, and commitments for mass transit, rail, research and development, and other matters. TSA signed annexes to the MOU with FRA in September 2006 and FTA in September 2005. These annexes describe each agency's roles and responsibilities for passenger rail security. For example, the rail annex requires that FRA and TSA inspectors coordinate their inspections and communicate security and safety issues to each other when they are identified. Although the execution of the MOU and related annexes is an important step forward, additional efforts to maintain and improve coordination will be required as both departments move forward with existing and new initiatives. We plan to revisit the coordination between DOT and DHS on passenger rail security matters during our follow-up review, which we expect to initiate later this year.

Transit providers, whether in a major city like here in Washington, or in smaller communities like those in my district, often serve a large proportion of tourists.

Many of these visitors are not familiar with the transit system they are using, and for many the trip on that transit bus or subway might be their first time on public transit. Has anyone looked at this issue?

We have not specifically looked at the issue of first time transit users as a security issue. However, in our 2005 review of passenger rail security, we found that passenger rail operators had made developing improved awareness of security among their customers a priority. Customer awareness programs we observed used signage and announcements to encourage riders to alert train staff if they observed suspicious packages, persons, or behavior. Of the 32 domestic rail operators we interviewed, 30 had implemented a customer awareness program or made enhancements to an existing program. FTA has assisted rail operators in this area by creating the Transit Watch program, in cooperation with industry groups such as APTA. Transit Watch is a nationwide safety and security awareness program designed to encourage the active participation of transit passengers and employees in maintaining a safe transit environment. FTA distributed education and training materials to rail operators so these materials could be provided to customers and employees. Rail operators stated that they attempt to entitle their customer awareness programs so that customers can easily remember the goals of the program. New York City Transit's "If You See Something, Say Something" campaign and the WMATA program, "Is That Your Bag?" are examples of this. Foreign rail operators we visited also attempt to enhance customer awareness. For example, 11 of the 13 operators we interviewed had implemented a customer awareness program. Similar to programs of U.S. operators, these programs used signage, announcements, and brochures to inform passengers and employees about the need to remain vigilant and report any suspicious activities. Only one of the European passenger rail operators that we interviewed had not implemented a customer security awareness program, citing the fear or panic that it might cause among the public.

Transit-based intelligent transportation systems are being deployed on more systems across country. Is there a focus to find ways where ITS can both improve operations and security? What are some examples of dual use for ITS?

In 2005, GAO released a report that looked at the deployment of intelligent transportation systems (ITS) and what was known about their benefits, particularly for relieving congestion.¹ However, we did not examine how ITS could be used for security purposes in this report or our 2005 report on passenger rail security.

¹GAO, *Highway Congestion: Intelligent Transportation Systems' Promise for Managing Congestion Falls Short, and DOT Could Better Facilitate Their Strategic Use*, GAO-05-943 (Washington, D.C.: September 14, 2005).

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STATEMENT OF

MIKE SIANO

INTERNATIONAL EXECUTIVE VICE PRESIDENT

OF THE

AMALGAMATED TRANSIT UNION

BEFORE THE

HIGHWAY, TRANSIT AND PIPELINES SUBCOMMITTEE

AND

RAILROADS, PIPELINES AND HAZARDOUS MATERIALS SUBCOMMITTEE

OF THE

U.S. HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

HEARING ON TRANSIT AND RAIL SECURITY

MARCH 14, 2007

AMALGAMATED TRANSIT UNION, AFL-CIO
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Chairman DeFazio, Chairwoman Brown, Ranking Members Duncan and Shuster, and Members of the Committee, on behalf of the more than 180,000 members of the Amalgamated Transit Union (ATU), I want to thank you for giving me the opportunity to testify today on the ATU's priorities and strategies for enhancing transit security. I also want to applaud this Committee's continued focus on this important and urgent issue.

The ATU is the largest labor union representing public transportation employees in the United States and Canada. ATU members are bus, van, subway, and light rail operators, clerks, baggage handlers and maintenance employees in urban transit, over-the-road and school bus industries, as well as paramedical personnel, ambulance operators, clerical personnel, and municipal workers.

The issue of transportation security is one that our members are confronted with on a daily basis. As vehicle operators and mechanics, our members are responsible for protecting the safety and security of not only themselves, but also their passengers. This is an awesome responsibility and one our members are ready to live up to, so long as they are provided with the tools and training necessary to equip them to prevent or, if necessary, respond to a terrorist or other emergency incident. We need the federal government to step in now and provide these workers and their employers with the necessary resources and requirements to protect our nation's public transportation systems.

Public transportation, by its very nature, is an attractive target for crime and terrorist attacks. It brings masses of people together, is open, highly visible and familiar, and when threatened or attacked, it can disrupt commerce, instill fear and bring an entire region to a grinding halt.

The recent examples of the Mumbai, London, Moscow and Madrid bombings - all within the last three years - are tragic examples of this reality.

In London we saw the crippling effects that such an attack can have on an entire community. When four suicide bombers detonated explosive devices in the London Underground and aboard a double-decker bus, 56 people died and more than 700 people were injured. In addition, the entire City of London was paralyzed as citizens were left with no way to or from work, and others, including tourists, steered clear of the city for fear of additional attacks. A separate failed attempt two weeks later similarly stalled normal operations in London and surrounding areas.

A decade earlier, ongoing bombing campaigns directed at the Paris Metro resulted in hundreds of casualties; and the release of sarin gas in the Tokyo subway system threatened the lives of between 5,000 and 6,000 people, resulting in 12 deaths and marking the first time chemical or biological weapons have been deployed on a large scale by terrorists.

And this isn't just happening in our rail systems. In Israel and elsewhere, buses have too often been the targets of terrorist bombings.

Unfortunately, similar incidents are likely to happen on our soil, in our transit systems.

The ATU's Role in Transit Security

Faced with this reality, the ATU has for years worked to raise the awareness of our members and their employers to this danger and to advance real, concrete solutions and initiatives to enhance the safety and security of the systems operated and maintained by ATU members.

We strongly believe that the labor community must be a partner in any comprehensive effort to address the security threats facing our industries. For that reason, we have worked closely with our members, the transit and bus industries, the Federal Transit Administration (FTA), the Transportation Security Administration (TSA) and elected officials at all levels of government, including many members of this committee.

Shortly after September 11th, the ATU produced and distributed a security training video and pamphlets providing guidance to our members on how to prevent, deter and respond in emergency situations. We also conducted a joint labor-management conference on transit security that was attended by more than 100 transit agency officials and employees from across the U.S. We worked with DOT and industry security experts to develop *Transit*

Watch, a nationwide safety and security awareness program that encourages the active participation and vigilance of transit passengers and employees. And we contributed to the design, distribution and promotion of the National Transit Institute's security and emergency response training programs for frontline transit employees.

We have also testified numerous times before Congress on this issue, including earlier this year before the Senate Banking, Housing and Urban Affairs Committee. We have continuously advocated for increased funding for transit security enhancements and for required training for all frontline transit employees. In this realm, we have assisted in developing legislation, including legislation introduced by Members of this Committee, which would enhance transit security.

Most recently, the ATU joined with APTA on the Mass Transit Sector Coordinating Council, which is tasked with the identification and prioritization of security measures within the mass transit industry and assisting in the development and implementation of plans to address these priorities.

The Need for Federal Government Action

The transit and over-the-road bus industries themselves have also taken admirable steps toward securing their operations, but - due in large part to funding constraints - they have not gone far enough. The reality is that these industries and the ATU can not do this alone.

The federal government must step up to the plate and provide the necessary funding, guidance and even mandates to provide the level of security that transit and over-the-road bus passengers and employees deserve. The federal government has not yet stepped up to the plate.

More than two years ago, Congress directed the Administration to take comprehensive steps to address transportation security risks, including risks faced by the transit and over-the-road bus industries. It was not until the very end of last year that President Bush issued an order to Secretary Chertoff to draft a plan to address security issues in the transit industry.

Now is not a time for drafting plans, it is a time for concrete action. The federal government must provide funding directly to transit agencies and over-the-road bus companies for security purposes and must ensure that frontline employees are prepared in the event of an emergency.

With much of the emphasis on airlines, rail and port security, no sector of our transportation network has been more neglected when it comes to security than transit. The deficiency in security funding for this industry is staggering. While the industry has estimated the actual need to be \$6 billion in order to adequately secure the network, only a sliver of that has already been provided and the budget requests submitted by the Administration have been woefully inadequate.

Security Training for Transit Employees

In addition to funding, it is the responsibility of the federal government to ensure that certain necessary steps are taken to enhance security.

Common sense tells us that the single most important thing that we can do to increase transit security is to provide each and every frontline transit employee - including rail and bus operators, customer service personnel and maintenance employees - with security and emergency preparedness and response training.

While we should not abandon research and deployment of new technologies, we need to recognize what has been proven to be the most cost-effective security measure: employee training.

In the event of a terrorist attack within a mass transit system, the response of employees at the scene within the first few minutes is crucial to minimizing the loss of life and to evacuating passengers away from the incident. Transit employees are the first on the scene, even before police, firefighters or emergency medical responders. They must know what to do in order to save the lives of their passengers and themselves. Further, they need to be trained to recognize security threats and need to know the appropriate protocols to follow for reporting and responding to potential threats.

Security experts, government officials and transit and over-the-road bus industry officials have all agreed that training is the most essential element of an effective security regime.

In fact, just last week, the TSA Office of Grants and Training issued a bulletin to all of our nation's transit systems stating "[r]ecent assessments and evaluations have highlighted the fact that security training for front-line employees of transit systems is a critical vulnerability that must be addressed as soon as possible." The bulletin states that transit agencies applying for grants for security training will receive elevated priority and further specifies that all frontline transit employees should be provided with annual training in security awareness, behavior recognition, and immediate emergency response.

While we are pleased that the agency has recognized the importance of training, experience tells us that without the adequate funding and mandates, the necessary training will not be provided.

Some transit systems, including most recently WMATA here in D.C., have chosen to train all of their frontline employees, and others are making comprehensive efforts to likewise train their employees. We applaud these systems for their commitment to security. Unfortunately, they are not the majority in the industry.

Most transit workers are simply not receiving the training they need. I know this because I talk to our members and they tell me they are scared - not because they know there is a threat, but because they feel unprepared if such an emergency occurs. And, sadly, it is not only members from smaller transit systems and bus operations that I hear this from. Employees of major transit systems in major U.S. cities tell me that they have not received any emergency response training.

In many cases, workers receive at most a piece of paper asking them to be "vigilant" and to be aware of suspicious persons or packages. Other workers have watched a short 10 - 15 minute video. These materials do nothing to prepare a worker for a real security incident. Employees need to receive, at a minimum, 8 full hours of training on an annual basis.

The National Transit Institute, which is funded by the Federal Transit Administration, has developed numerous mode and employee-specific training programs that have been widely approved and tested by the ATU, APTA, FTA, TSA and others in the transit industry. Unfortunately, these programs, which are available free-of-charge to any U.S. transit agency, - have only been provided to less than a quarter of our nation's transit employees.

Despite the availability of these free programs and almost unanimous agreement in the industry about the need for training, transit systems continue to resist calls for training

because of the operating costs to pay employees and keep the buses and trains running during training sessions.

It is beyond time for the federal government to step in and to not only provide funding for the operating costs associated with training, but to also require all transit systems to train each and every frontline transit employee. It is the role of the federal government to ensure that this happens. Leaving it exclusively to the will of the industry is, as experience dictates, not sufficient.

The Rail and Public Transportation Security Act

I want to applaud the members and leaders of this committee, in this Congress and the previous sessions of Congress, for recognizing the need for federal government action in this realm. The recently introduced Rail and Public Transportation Security Act of 2007 (H.R. 1269), as well as legislation passed by this Committee in the previous session, would go a long way toward addressing the needs of our nation's transit systems and their employees.

Not only would this legislation provide significant funding resources directly to transit agencies and over-the-road bus companies for crucial capital enhancements, such as perimeter protection systems, communications equipment, and decontamination equipment, but it also recognizes the need for training by requiring that all frontline employees receive the necessary training. The bill would further require consultation with employee

representatives in the development and implementation of security priorities and measures.

The ATU is very supportive of these provisions.

We need to take action now to address the security needs of the transit and over-the-road bus industries - and most importantly to train the workers in this industries. Doing so now will save lives.

I thank you again for the opportunity to testify today on behalf of the ATU. I can not stress enough how important it is to include the input of transportation labor in this discussion. It is our members who are on the front lines of this battle and who know best what dangers they face everyday on the job. I appreciate your recognition of this fact and look forward to working with you to address the important issues raised here today.

I would be happy to answer any questions you may have.

**United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
Subcommittee on Railroads, Pipelines,
and Hazardous Materials
Hearing on Rail and Transit Security
March 7, 2007
Testimony of John P. Tolman, Vice President
and National Legislative Representative
Brotherhood of Locomotive Engineers and Trainmen
a Division of the Teamsters Rail Conference**

Good morning, Chairman DeFazio, Chairwoman Brown, Ranking Member Duncan, and Ranking Member Shuster, members of the Subcommittees. My name is John Tolman, and I am Vice President and National Legislative Representative of the Brotherhood of Locomotive Engineers and Trainmen (BLET), which is a division of the Teamsters Rail Conference.

Thank you for inviting me here today to testify on the issue of rail and transit security. On the behalf of the 39,000 members of the BLET — and more than 70,000 Teamsters Rail Conference members — I would like to thank you for your interest in this subject.

The issue of railroad security is of vital concern to all railroad workers, including Teamster Rail Conference members represented by the BLET and the Brotherhood of Maintenance of Way Employees Division (BMWED). The Teamsters Rail Conference is dedicated to improving rail security and safety in America in order to adequately protect rail workers and the communities they serve. Each and every day, we are on the front lines of the nation's transportation system and see the woeful lack of security on our railroads. This lack of security is more than just troubling; it is tragic, because we have seen the damage that can be done by accidents on the railroads and shudder to think of the damage that could be wrought by terrorism or sabotage.

It is frightening to think that there were more than 250 terror attacks on railroads worldwide from 1995 until June of 2005. Since June 2005, we have seen attacks perpetrated in London, and in Mumbai and Dewana, India. In the past 11 years, there has been one successful attempt to attack a railroad in the U.S. and several more attempted attacks. The attack in Hyder, Arizona, on October 9, 1995, killed an Amtrak employee and injured 78 other people. This case was never solved.

The frequency and severity of the attacks on railroads worldwide and here at home demonstrate the urgency for change in the way our rail security system works. However, our current regulations are severely inadequate, and the proposals that are on the table contain gaping holes.

As you know, the Department of Homeland Security and the Transportation Security Administration spend nine dollars per airline passenger on security, but spend only one penny

per rail/mass transit passenger. This is a pittance when compared to the number of riders each day on our nation's rail and mass transit systems.

Each weekday, 11.3 million passengers in 35 metropolitan areas and 22 states use some form of rail or mass transit. These passengers ride on trains that cover over 10,000 miles of commuter and urban rail lines. The very nature of the rail system makes it vulnerable to attack. In addition to the more than 10,000 miles of commuter and urban rail lines, there are 300,000 miles of freight rail lines. These lines are open and easily accessible to the general public.

There are many components that make up the issue of rail security. Today, I would like to discuss four of these issues: training, whistle blower protections, re-routing of hazardous materials and the Transportation Worker Identification Credential program. In addition, I would like to touch the issue of Federal Railroad Safety Act (FRSA) pre-emption of state laws, as well as the recent decision by the staff of the Securities and Exchange Commission (SEC) to allow Norfolk Southern (NS) to exclude a Teamster shareholder proposal calling on NS to disclose its efforts to safeguard the security of its operations and minimize material financial risk arising from terrorist attack and/or other homeland security incidents.

Worker training is one area of grave concern for rail employees, because rail security measures have not been given the attention they deserve. The railroad industry is in the midst of a rapid turnover—fueled by the first wave of retirements of Baby Boomer generation railroad workers—that strains the industry's training programs for all crafts. The industry simply does not devote sufficient resources either to providing initial training for new workers or for periodic recurrent training for more experienced workers. Far too often, training schedules are dictated by the need to deploy new workers in the field, rather than ensuring that those workers, and their more senior co-workers, have the necessary tools to work safely and efficiently.

We believe that the TSA's recent proposals for rail transport of hazardous materials fall short when it comes to the safety of rail employees and the public. Although the proposed rules bring some of the dangers of hazardous materials storage to light, they do not adequately address quality safety, security, and emergency response training for rail employees.

We respectfully request the Congress to pass legislation that will compel rail corporations to train their employees on proper safety and evacuation procedures; the use of appropriate emergency escape apparatus; the special handling of hazardous materials; and the roles and responsibilities of rail employees within the railroad's security plans, including an understanding of the plan's threat level index and notification to employees each time the threat level is changed.

Locomotive engineers, trainmen and track maintenance workers are the true first responders to rail emergencies—the eyes and ears of the industry. They are the first on the scene, and often the last to leave. Yet, the rail corporations do not have quality safety and security training for employees in place. That failure places these first responders in harm's way, and by extension puts the communities served by the railroads in harm's way as well.

Even since 9/11 and the attacks on rail and transit systems overseas, the security training given to rail employees has been minimal, usually comprised of nothing more than a printed brochure or 10-minute videotape. Moreover, 80 percent of our members who participated in a rail security and safety survey said that they had not received any additional security related training since 9/11. Therefore, we would welcome and support legislation that would mandate quality comprehensive security training for rail employees.

The lack of quality training is documented in the Teamsters Rail Conference report "*High Alert: Workers Warn of Security Gaps on Nation's Railroads*." This report was based on survey responses gathered over the previous year from more than 4,000 Rail Conference members employed on freight and passenger railroads nationwide. The survey asked rail workers to report the safety and security measures in place on any one workday during the nearly year-long survey period.

The *High Alert* report reveals a shocking inattention to security by the nation's largest rail corporations. Rail employees have little company-sponsored training on the handling of hazardous materials. The practice of leaving locomotives and other equipment unlocked is far too common. The report's conclusions are that the nation's rail system is vulnerable to terrorist attack, and the rail corporations have not taken seriously the safety of their employees and the public. The findings of that report include the following:

- 94% of respondents said that rail yard access was not secure;
- 70% of respondents reported seeing trespassers in the yard; and
- only minimal security training had been provided to employees who have been warned that they could be the targets of a terrorist attack.

Employee training is one of the Rail Conference's most sought after security provisions. Throughout the country, railroad workers have established that their employers provide little or no specific training for terrorism prevention or response. In the *High Alert* survey, 84% of respondents said that they had not received any additional training in terrorism response or prevention in the 12 months preceding the survey; and 99% said they did not receive training related to the monitoring of nuclear shipments. This lack of training should be of critical concern to citizens who live near rail yards and tracks. The workers who lack this training will often be the first ones to respond to incidents.

The railroad industry also has not adequately trained and integrated its employees into the security plans currently required. Railroad employees remain largely in the dark regarding the carriers' security plans and — while we can appreciate that certain security information must remain confidential — we believe that employee hazmat and security training must be expanded and improved. Rail employees must know and understand the basic framework of their employer's security plan, including their roles and limitations within the employer's overall security plans, how the plan's threat level matrix is structured, and how notification to employees will be transmitted each time the threat level is changed. Today, rail employees do not have this information. Rail employees are not trained to know and understand the carrier's threat level

matrix, and they are not notified when the threat level is changed due to either general or specific threats.

Worker training in the handling of hazardous materials has been a particular sore point for the BLET, and for all of Rail Labor. The training provided by the industry is so insufficient that we, long ago, took matters into our own hands. Hazardous materials training programs have been provided under labor sponsorship at the National Labor College, which is located at the George Meany Center in Silver Spring, Maryland.

Our Railway Workers Hazardous Materials Training Program has been a resounding success. The program has, over its fifteen years, continually evolved and expanded to meet the training and competency needs of rail workers that are not met by the railroads. Initially offering only one course, the program now offers five. Training has moved beyond the conventional classroom to include simulation and on-line activities. A core of professionally trained instructors has been replaced with a corps of peer instructors. Because of this program's 16+ years of success, tens of thousands of rail workers are working more safely and in safer environments.

Since the onset of training in April 1991, the union-run program has trained more than 20,000 rail workers. Evolving from an 8-hour program of awareness training only, the National Institute for Environmental Health Sciences (NIEHS)-funded and George Meany Center-sponsored program now offers five courses: a five-day Chemical/Emergency Response training in the classroom; an on-line Emergency Responder Awareness Level 101 course; the OSHA 10-hour General Industry Safety and Health Outreach Program; disaster site training; and the newest addition, a Radioactive Material Transportation Safety Program, which is funded by a separate grant from the U.S. Department of Energy.

The newest program began last summer at the National Labor College, and includes a Modular Emergency Response Radiological Transportation Training (MERRTT) "train the trainer" course. By contrast, we are unaware of any railroad currently conducting training focusing on transportation of spent nuclear fuel and high-level radioactive waste, even though the Department of Energy is expected to begin a 38-year project to transport such waste from DOE sites to storage and disposal facilities as early as next year. The labor hazmat program has trained workers in 49 states and the District of Columbia. We also have fostered the creation of community partnerships that include joint rail worker, fire fighter, EMT, and public safety personnel training in communities throughout the U.S.

The program has a new emphasis on railroad security and disaster response and teaches the five-day students how to serve as skilled support personnel in an incident command emergency setting. Much of the program material is available in Spanish and a comprehensive web site serves both the English and the Spanish-speaking work forces. The five-day program addresses the training requirements of the Department of Transportation's Hazardous Materials Regulations at 49 CFR Part 172, as well as the requirements of OSHA First Responder and Operations Level training under 29 CFR Part 1910.120. Railroads generally do not provide wages or support for workers attending the program. In fact, — and this is most unfortunate —

members sometimes are not allowed time off from work to attend the program, even though the railroad is not paying wages.

The program currently serves eight rail unions,¹ and at least ten crafts,² from major railroads as well as from commuter and short-line railroads. This cross-company, cross-union, cross-craft training has proved invaluable, as one group learns from another. Each union has its own craft-specific tasks and challenges, and prior to this hazmat training program there was little, if any, cross-union training. Hazards and challenges faced by those in the yards may be different than those faced by road train crews, and different still from those who work along the track or in the shops.

Understanding the work of other crafts, the safety and health challenges that each face, and the coordination of each craft's efforts in an emergency, enhances railroad hazardous materials safety and security. A well-trained and knowledgeable workforce is the first line of defense and can prevent a minor incident from becoming a major hazardous materials accident. The eight rail unions have worked together to enhance rail safety by providing comprehensive training to its members and by providing substantial administrative and personnel support to the union-run Railway Workers Hazardous Materials Training Program.

Labor has been able to offer these programs through a combination of federal funds and subsidies from the North American Railway Foundation, which is a private non-profit organization. However, subsidies and contributions are hard to come by. Nonetheless, we take great pride in having trained over 20,000 railroad workers since the program's inception. At the end of the day, though, this represents but a small fraction of the railroad workers who require thorough, in-depth training, and recurrent training.

Railroads boast that their workers are the eyes and ears of the industry, but we frankly feel more like canaries in a mine whose only clue of pending disaster will be when disaster strikes. As workers on the front line, our members will be solely relied upon by passengers, the public, and emergency responders to assist in the first critical moments of any rail emergency. Therefore, comprehensive security and response training for rail employees is an absolute must, and I strongly encourage this committee to address this long-outstanding issue.

Unfortunately, employees are still being intimidated and harassed when they report security problems. Strong whistleblower protections must be a component of any rail security legislation. Railroad workers should not — and cannot — be subjected to dismissal when they provide security threat information to the government.

¹ Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB); SEIU's National Conference of Firemen & Oilers (NCFO); Transport Workers Union (TWU); Transportation-Communication International Union (TCU); Brotherhood of Railway Carmen; and United Transportation Union (UTU).

² Brakemen, Laborers, Workers from the Building & Bridge Department, Signalmen, Carmen, Switchmen, Conductors, Track Department Workers, Locomotive Engineers, Yardmasters, and Hostlers.

Mandatory re-routing of hazardous materials would further jeopardize these untrained and unprotected employees, along with the general public, in our view. The Rail Conference does not support the mandatory re-routing of hazardous materials. Mandatory re-routing of hazardous materials for safety reasons sounds like a good idea in theory, but it is not a practical solution, except on very rare occasions. Based on our experience, there are several serious flaws with a broad program of mandatory re-routing.

Current conditions in the railroad industry would make it difficult to re-route hazardous materials. In many parts of the country during the 19th Century, population growth followed railroad construction; therefore, rail lines, and particularly the older yards and terminals, tend to cluster around major urban areas.

Much of the infrastructure in the industry is at or near capacity, and there are both labor and equipment shortages in many areas. Furthermore, given the nature of train operations and FRA requirements, locomotive engineers and conductors cannot simply be shifted from route to route in the way that a truck can be diverted from one Interstate highway to another; qualification requirements are territory-specific and exacting. Simply put — there is not enough slack in the system to re-route hazardous materials on a large scale without the system experiencing significant delays and disruption.

The very nature of the system would make it difficult to re-route on such a scale. Due to the limited areas in which railroad tracks run — and depending upon what part of the country is involved — re-routing could add hundreds of miles to a trip. The areas through which hazardous materials are re-routed may adopt a “not in my back yard” posture against the materials being moved through their area, which is a problem this nation already has concerning long-term storage of spent nuclear fuel and high-level radioactive waste.

Re-routing on a large scale also could have the unintended consequence of making us less safe, because hazardous materials shipments would be gathered into a small number of designated corridors — creating a security problem by making each of those corridors a more attractive target for a terrorist attack.

Two of the most horrific hazardous materials accidents in recent years happened in non-signaled, or “dark,” territory and were the result of misaligned main track switches.³ There is switch position detection technology available off-the-shelf today that can eliminate this risk altogether, and requiring the use of this technology can realize some of the same goals as re-routing in a more cost effective and less disruptive way.

Similar to re-routing, the Rail Conference believes that the Transportation Worker Identification credentials program is a mixed blessing. The Conference understands the need for

³ The first occurred in Macdona, Texas, on June 28, 2004, resulting in a chlorine gas release that killed three and injured twenty-nine. *See* National Transportation Safety Board Railroad Accident Report No. NTSB/RAR-06/03. The second occurred in Graniteville, South Carolina, on January 6, 2005, resulting in a chlorine gas release that killed nine and injured 544 people, 75 of whom were admitted to the hospital. *See* NTSB Railroad Accident Report No. NTSB/RAR-05/04.

heightened security against terrorist attacks that target America's rail facilities and believes that a limited, properly designed and safeguarded TWIC program — as one element of a comprehensive and integrated anti-terrorist rail security system — could help protect our railroads from attack. Unfortunately, the program established by TSA in conjunction with the Coast Guard proposes a cure that is worse than the illness in some respects.

We strongly disagree with the decision that TWIC disqualifying criteria mirror those imposed by TSA for a Commercial Driver's License Hazardous Materials Endorsement. In order to attain the stated goal of protection against terrorism, there should be a demonstrable nexus between disqualifying crimes and the potential for terrorist activity; instead, the TWIC rule simply presumes that a connection exists between certain types of past criminal activity and future risk of terrorist activity. This is odd, considering that the investigation of the July 2005 London bombers provided evidence that a criminal background could be a contra-indicator of the potential for terrorist activity.

In our view, the appropriate disqualification standard is whether the threat assessment discloses a conviction of a felony that could cause the individual to pose a terrorism security risk to the United States. By contrast, the TWIC rule would trigger a mechanistic review of a worker's criminal record, rather than a genuine threat assessment. We believe that there should not be automatic disqualification for felony convictions for drug distribution, unlawful possession of firearms or fraud, or conspiracy or attempt to commit any of these crimes.

We also have serious reservations concerning commitment to a mental health facility being a disqualifier, which are heightened by the fact that the TWIC language is broad and vague. The railroad industry and rail labor take great pride in having aggressively tackled the problem of substance abuse by workers over the past two decades, and giant strides have been made because of labor-management cooperation. In many cases, the foundation for successful rehabilitation was laid during inpatient treatment at a mental health facility.

To penalize workers who have fought to attain sobriety — using the tools provided and urged by their managers and their unions — is unconscionable. While certain mental illnesses may provide a legitimate basis for requiring a terrorist threat assessment, any security rule that does not explicitly and specifically exclude all drug and/or alcohol rehabilitation commitments from the list of potentially disqualifying conditions is manifestly unfair.

In addition to the fundamental flaws identified above, several other aspects of the rule are cause for serious concern. The past five years have been marked by a government-led erosion of the level of privacy every American expects. On several occasions within recent years, both private employers and governmental agencies have allowed security breaches that have seriously compromised private information concerning millions of citizens.

We see no indication that the TWIC program will be administered in a way that affords greater privacy than we have been forced to endure recently. To the contrary, we have received information that at least a half-dozen railroad workers have lost their jobs as a result of TWIC-related investigations. The rule should specifically prohibit employer access to any information developed under the program, other than eligibility or ineligibility for a TWIC. Furthermore,

there should be an explicit prohibition against TSA and/or USCG sharing any information developed under the program with any other federal agency.

We also believe that the review process does not begin to accord an appropriate level of due process. The terrorist threat assessment should be completely transparent, so that judgments and findings may be appropriately challenged when a worker believes he/she has been improperly denied a TWIC. We also oppose the requirement for “self-reporting” for two reasons. First, it presumes a level of legal sophistication that most workers do not possess, and to that extent will create more problems that it solves. Second, the temporary nature of the TWIC will make all convictions discoverable on a timely basis, whether self-reported or not.

Moreover, threat assessments should not include instances when the disposition of a worker’s arrest is uncertain: the criminal record review will disclose all convictions, and whatever remains either is erroneously on the record or not yet finally adjudicated, at which point the worker remains absolutely entitled to the presumption of innocence. Even more importantly, a worker who is denied a TWIC or whose TWIC is suspended or revoked should have the ability to appeal the decision to an Administrative Law Judge; it is fundamentally unfair for the agency taking an adverse action to have final say over the appeal of that action.

Lastly, we believe that the program imposes excessive costs — in both time and money — upon workers. Locomotive Engineers are the most highly-regulated workers in the railroad industry, with federally-imposed medical, knowledge, conduct, and performance standards. Maintaining these standards requires investments of time and payment of fees that are not insubstantial. A railroad industry TWIC program should meld its administrative requirements with currently existing requirements, and the TWIC should be provided at no cost to any rail worker.

We strongly believe it is inappropriate to charge BLET members — or any railroad or other transportation industry workers, for that matter — any fee in connection with the TWIC program, including a card replacement fee, for three reasons. First, it is the employer’s responsibility to maintain a properly qualified and screened workforce, and the employer should bear all costs associated with the TWIC program as a cost of doing business.

Second, the overriding interest served by the TWIC program is the public interest. Further, the program was conceived and implemented in order to facilitate the work of various governmental security agencies. To the extent that employers are not required to bear all costs associated with the TWIC program, the government should bear the remainder as a reflection of the public and governmental interests served.

Third, even without any out-of-pocket costs, the TWIC program already has proven to be an invasive disruption in the lives of all transportation workers. Indeed, as I said before, more than a half dozen railroad workers already have lost their positions, during the short period since promulgation of the TWIC program’s overly broad requirements. To require transportation workers to pay any sort of fee associated with the credential only adds insult to injury in our view.

I would now like to turn to an issue which was touched upon during a previous hearing before this committee. The issue of pre-emption of state laws by the FRSA is one of grave concern to the Rail Conference. Courts have recently held that the preemption clause in the Federal Railroad Safety Act eliminates all state tort causes of action in any area in which a federal regulation enacted by the FRA pursuant to the FRSA.

The FRSA was enacted in 1970 to “promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.” 49 U.S.C. § 20101. The Congressional purpose in enacting this legislation was to establish a uniform system of minimum safety standards that would apply across the United States.

In recent years, however, that purpose has been perverted by courts who misapply the doctrine of preemption to deprive Americans grievously injured in railroad accidents of any remedy, even when it is undisputed that the cause of the accident was the railroad’s failure to live up to those minimum federal standards. Now is the time for Congress to step in and let the courts know that they have misinterpreted Congress’ clear intent: that the purpose of the FRSA was and is to set uniform minimum safety standards, and that an expansive application of preemption to deprive accident victims access to state remedies is a misapplication of the law.

The issue is best framed by the Minot, North Dakota derailment cases. On January 18, 2002, 31 cars of a Canadian Pacific Railway train derailed near the city of Minot, North Dakota. The derailment caused seven cars carrying anhydrous ammonia to breach, releasing over 200,000 gallons of the deadly gas. As a result, one man died and hundreds were injured. Among the causes of the derailment was the failure of a so-called temporary joint that had been left in this substandard track for over 20 months. Thus, CP did not comply with the minimum standards set forth by the FRSA.

Nonetheless in *Mehl v. Canadian Pacific Railway*, 417 F. Supp. 2d 1104 (D.N.D. 2006), the Federal District Court in North Dakota dismissed all claims against Canadian Pacific on the basis of federal preemption. The *Mehl* court held that “neither the United States Supreme Court nor the Eighth Circuit requires railroads to prove compliance with federal regulations before allowing preemption of state law claims.” *Id.* at 1116.

Two months after the *Mehl* decision was issued in March 2006, the Eighth Circuit held that regulations promulgated by the Federal Railroad Administration (FRA) pursuant to the FRSA on the issue of track inspection form the basis for original federal question jurisdiction despite the fact that the FRSA provides no cause of action or other remedy for those harmed by the failure of a railroad to comply with those regulations. *Lundeen v. Canadian Pacific Ry*, 447 F.3d 606 (8th Cir. 2006).

We believe that the courts have broadly misconstruing preemption in a way that actually provides railroads with absolute immunity. Preemption is the principle, derived from the Supremacy Clause of the United States Constitution, that a federal law can supersede or supplant any inconsistent state law or regulation. Where preemption occurs, state law on a given subject is invalidated, and the federal law substituted in its place.

This should mean that if FRA has promulgated a federal standard to govern a particular area of railroad operations, that standard is a *minimal standard* of adequacy. Any lesser or conflicting state guideline is preempted, except in exceedingly limited circumstances. Where the FRA has not yet promulgated a federal standard, any pertinent state standard continues in effect. Preemption as used in the context of the FRSA should not and cannot mean that the very existence of the federal standard preempts state tort law remedies for injuries sustained as a result of railroad negligence.

The Rail Conference also is deeply concerned by the recent decision by the staff of the SEC to allow NS to exclude a Teamster shareholder proposal calling on the company to disclose its efforts to safeguard the security of its operations and minimize material financial risk arising from terrorist attack and/or other homeland security incidents.

We strongly believe the Commission's staff failed in its interpretation of "Ordinary Business" when it concurred with the Company's position that homeland security issues are strictly in the purview of management. It is absurd to equate issues such as the ramifications of a hijacking of a freight train carrying toxic or explosive materials with everyday management decisions such as setting shipping charges. It is our strong belief that the safety and security of our nation's rail network is a matter of national policy concern.

There have been more than 250 terrorist attacks on railroads worldwide in the past 12 years. The FBI has warned that our rail system is a likely target for terrorists and still we allow the carriers to keep their security plans in the dark not only to their workers but also their investors and the communities in which they operate.

The fact is that corporations can and do safely disclose information about actions taken to protect their infrastructure and personnel as well as associated costs. We have to look no further than Canada where the Canadian Pacific Railway discloses such information. We should settle for no less.

The Teamsters are appealing the staff's decision. We hope that the United States Congress and this Administration would encourage the Commissioners of the SEC to review and reverse the staff's decision.

The Teamster Rail Conference looks forward to working with this committee and the Congress to address the issues of rail security nationwide. I thank you for the opportunity to testify before you today, and I will try to answer any questions you may have.

**STATEMENT OF FRED E. WEIDERHOLD
INSPECTOR GENERAL
AMTRAK**

**BEFORE THE
U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION &
INFRASTRUCTURE**

**Hearing on the
Rail and Public Transportation Security Act of 2007**

March 7, 2007

**AMTRAK
OFFICE OF INSPECTOR GENERAL
10 G STREET, NE
WASHINGTON, DC 20002
(202) 906-4600**

Thank you for the opportunity to appear before you today to discuss rail security issues and the Rail and Public Transportation Security Act of 2007 draft bill, HR 1269. I share the Committee's concern and sense of urgency that much more can be done to secure and safeguard our nation's rail and transit assets. The responsibility to act is shared among federal, state, and local governments, and the private sector, and your bill will help jump start some long overdue initiatives.

You have heard testimony from many witnesses about the complexity of the rail environment, the challenges to secure such an 'open system', and the need to balance vulnerabilities, threats, and risks in allocating federal security dollars --- these are real challenges. Having worked intimately with passenger rail safety and security issues for over twenty years, I will tell you the work to secure the railroad is very difficult, and often frustrating; however, I will also tell you that collectively we can greatly improve our readiness.

Before offering specific comments on the draft bill, I would offer some over-arching observations for your consideration:

- **The time to take action to possibly prevent, mitigate, and recover from a terrorist attack involving rail and transit assets is quickly passing -- we need to act now.**

The reality, as the Committee Members are very well aware, is that we are operating our rail services in the wake of Madrid, London, Mumbai, and other cities where terrorist have elected to wage their war. I suspect that every witness who testifies before you about rail and transit security will invoke the names of the cities attacked, but how much have we really accomplished over the past several years --- clearly, not enough. The Committee has received testimony from the GAO regarding delays to the Transportation Sector Specific Plan, and the Committee is taking action to ensure better coordination of transportation security strategies and plans. Amtrak is not waiting; its Board, its new Chief Risk Officer, and management have made new commitments to increase significantly its canine resources, place more of its own, and other, police and security on its trains and in its stations, review its screening protocols, re-direct capital monies to critical asset protection, and 'build-in' security wherever possible. Your bill, and the specific inclusion of funds to address Amtrak's security investment needs, is welcome and appreciated.

- **Capitalize and leverage the collective knowledge and experience that cuts across Departmental boundaries and the public and private sectors.**

Your bill requires greater cooperation and real coordination between and among those Departments and agencies with responsibilities for homeland security; this is a great message. It is an understatement to say we are not using all of our resources optimally. The GAO has commented that the sheer number of public and private stakeholders, and the complexity of our rail systems, may lead to duplication of effort, communications challenges, and confusion about roles and responsibilities --- that has happened. The

good news is there has been some progress --- in well executed, risk-based vulnerability assessments, in meaningful state and local law enforcement cooperation, in emergency response training, in advancing security technologies (helpful, but not a panacea), and, mostly, in very good people stepping forward, trying very hard to work the issues. DHS and DOT must continue to reach out and tap these resources, and rail and transit security should not be compromised or relegated to turf struggles.

- **Ensure security standards and best practices are fully developed before regulations are promulgated.**

One of the difficulties we have encountered in evaluating Amtrak's efforts to improve its security posture is the lack of security standards that have been fully vetted, practiced, and iterated. Although some security directives were prepared by TSA in May 2004, these directives are not necessarily the comprehensive bases for an effective rail passenger security strategy or effective regulations. The Committee may want to direct a joint Department review of the effectiveness, lessons learned, and potential enforceability, of the existing TSA Security Directives (RAILPAX 04-02) before additional directives are enacted.

The Committee should look to organizations like APTA, which is recognized as a Standards Development Organization, as a starting point to develop baselines for rail security and emergency preparedness best practices. Amtrak also is re-examining its protocols and will most likely redefine its own baseline security standards, working closely with domestic and international rail and transit partners, as well as DHS and DOT.

- **Ensure linkage between security and safety.**

One of the definitions we are using within Amtrak to determine when we have achieved adequate security awareness is when security has the same status as safety on our railroad. All rail operators --- be they freight, passenger, or transit --- live and practice safety in their daily work lives. Railroaders begin their day with safety messages and safety inspections; we train for it, we measure it, we have recognition ceremonies to celebrate it, and we do not take it for granted. In the new world of terrorism, especially terrorism directed at rail and transit, the same must become true for security. Certainly, there are protocols, practices, and skill sets that differentiate security from safety, but the work is performed over the same assets and the same operations. Whenever possible, security and safety should be addressed concurrently.

Specific Comments for Draft Bill:

Section 3 – National Strategy for Rail and Public Transportation Security

This section requires that the Secretary of the Department of Homeland Security (DHS), coordinate with the Secretary of the Department of Transportation (DOT), and develop a comprehensive modal plan for covered transportation; we agree. Coordination is

certainly a prerequisite for effective working relationships between the two Departments, there will also be occasions where interdepartmental, cross-functional teams should be established, and where joint operations may be warranted.

At Section 3 (a) (4), the Committee includes a requirement that DHS and DOT develop a process for expediting security clearances and facilitate intelligence and information sharing. The Committee may wish to prioritize this requirement by mandating an expedited security clearance process for select senior rail and transit officials (CEO, COO, Chief Security Officer or equivalent) for all carriers assigned to the high risk tier. Senior railroad officials have had to wait well over one year for such clearances. Additionally, the Committee may want to direct that the processes for facilitating intelligence and information sharing be evaluated by the Department OIGs.

At Section 3 (a) (7), the Committee requires that the joint modal plan include, “a framework for resuming the operation of covered transportation in the event of an act of terrorism and prioritizing resumption of such operations”. This directive is highly significant because it requires DHS and DOT to become attentive to continuity of operation planning, not just for individual carriers, but for transportation systems.

Section 4 – Assignment to Risk-Based Tiers

We agree that it is extremely important to establish criteria by which those carriers and systems that face the greater risks are prioritized. Terrorists’ strikes against rail targets have historically involved light rail passenger systems and transit, often focusing on multiple targets, and, as we saw in the London bombings, follow-up attacks on connecting bus services. For these reasons, we encourage assignment based on modal and inter-modal “systems” as well as individual providers within those systems.

Section 5 – Rail and Public Transit Assessments and Plans

We agree with the Committee’s direction to mandate vulnerability assessments and security plans for the rail sector. We know the Committee will find many carriers have already completed such assessments, and security plans have been prepared and are exercised during heightened threat levels.

Using DHS Office of Domestic Preparedness (now Grants & Training) funds, vulnerability assessments for Amtrak’s Northeast Corridor and Chicago Union Station were completed in May 2006. Vulnerability assessments for the balance of most of Amtrak’s other system assets should be completed this fiscal year. The methodology used for Amtrak’s vulnerability assessments are consistent with that used for the majority of the transit properties. We believe these assessments, while not exhaustive, provide a valuable mapping of the vulnerabilities of key Amtrak, and Amtrak-used, assets, but these are only starting points.

The Amtrak OIG has observed that many of the vulnerability assessments are carrier-specific and not necessarily linked to larger system or nodal vulnerabilities. An

appropriate role for a DHS Area Rail and Public Security Committee, or larger DHS entity, would be to link the assessments and plans into a larger rail transportation security matrix.

An interesting provision that the Committee recommends in Section 5 (f) is for Security Performance Requirements (for the security plans). We presume the performance requirements are intended to answer the question of ‘how effective’ the security plans are in adding to value to security preparedness. These performance requirements may evolve into the ‘successor’ guidelines to the RAILPAX Security Directives.

The Committee, and DHS and DOT, need to appreciate the complexity of the passenger rail operating environment and impact on stakeholders with respect to conducting vulnerability and threat assessments and preparation of security plans. For example, Amtrak serves over 500 rail stations across the country, but owns less than 80. Initially, Amtrak began its vulnerability assessments of Amtrak-owned properties, and, only later, expanded its assessment approach to include other ‘Amtrak-used’ assets. Even using an “owned assets” approach, there are difficulties in implementation with the myriad of stakeholders sometimes present.

For example, here at Washington Union Station, part of the facility is directly owned by Amtrak (from the gate areas north), the Main Hall and retail facilities are owned by the Union Station Redevelopment Corporation (USDOT, Amtrak, DC), areas of Columbus Circle are owned/controlled by the U.S. Park Police, Capitol Police, and the District of Columbia. In addition, Virginia and Maryland operate state-supported commuter services into the station (using both Amtrak and CSX operating crews and equipment). Which entity should have responsibility for vulnerability assessments and security planning for a complex property or inter-modal facility?

Given the criticality and iconic value of an asset such as Washington Union Station, Amtrak, appropriately, elected to undertake assessments that involved all property owners, all operators and users, and other stakeholders. At other stations and facilities, it may be less clear.

Section 6 – Strategic Information Sharing

The goal of this requirement is to develop an information sharing plan to ensure the development of both tactical and strategic intelligence products for the rail sector, with special attention being paid to the coordination of intelligence analyses between TSA and other intelligence groups. We agree with this recommendation.

Amtrak has access to several sources of intelligence information today, both through DHS and DOT, as well as through other sources. Amtrak participates in the Surface Transportation Information Sharing and Analysis Center (ST-ISAC), which was established and is maintained by the Association of American Railroads (AAR). The ST-ISAC provides useful information to Amtrak, especially in the areas of cyber-security

and after-action threat analyses. Amtrak also participates in the Railway Alert Network (RAN), another AAR-maintained information and intelligence sharing system.

More recently, Amtrak placed personnel on the FBI's New York and Washington Field Office's Joint Terrorism Task Forces (JTTFs), and the National Joint Terrorism Task Force (NJTTF), with access to those units' intelligence centers. Additional Amtrak and OIG staff are assigned to various Department of Justice sponsored Anti-Terrorism Advisory Councils (ATACs) and working groups.

I would rate the dissemination of unclassified information, For Official Use Only (FOUO), and Sensitive Security Information (SSI) to Amtrak as good and improving. However, we absolutely share the AAR's concern about the critical need to safeguard and compartmentalize all classified information, including SSI.

With respect to Section 6 (e), regarding the relationship of Security Clearances to intelligence information dissemination, the Committee and DHS may want to consider greater use of intelligence 'tear sheets' to disseminate more critical information. Additionally, the Committee and DHS should be concerned about the availability and use of classified communications channels with rail sector officials.

The Committee should also be cognizant of the fact that rail service providers, when conducting vulnerability, threat, and risk analyses, as well developing security plans and mitigation and response strategies, are generating a considerable amount of highly sensitive data that can be easily exploited to the provider's, and the nation's, detriment. Amtrak has taken advantage of DHS's Protected Critical Infrastructure Information Program by submitting work product for protection under the Critical Infrastructure Information Act.

Section 7 – Rail Security Assistance

Amtrak strongly supports its inclusion as an eligible entity for security improvement grants. A stable funding mechanism for sustained security and emergency preparedness improvements at Amtrak, and within the passenger rail sector, is critically important.

Most of you know that Amtrak's financial condition has been precarious in recent years, and Amtrak's funding of police and security operations has been limited to its own internal police forces (about 350 persons) and work on a major fire and life-safety tunnel project in New York City. Amtrak was requested, on several occasions, by both House and Senate Members to delineate what it needs to advance its security and emergency preparedness, but well intended bills have never been enacted.

Since FY 2005, Amtrak has been allocated only about \$22 million in DHS grant funds. Amtrak has used some of these grant funds to conduct vulnerability assessments, install a pilot chemical sensor system in four stations, fund a Washington, DC tunnel security pilot project, and fund several other higher priority projects. However, there are many

more security and emergency preparedness projects and initiatives for Amtrak that require the support contemplated by the Committee's bill.

In addition to those grant funds available to Amtrak under the Committee's bill, Amtrak's Board of Directors and its senior management are committed to doing as much as possible within the limits of Amtrak's internal finances. Amtrak's new Chief Risk Officer, a former high ranking DHS manager, has requested that Amtrak increase its canine units and work immediately to get more police and counter-terrorism security forces riding its trains. Amtrak has had great difficulty in filling its police and security staffing levels because its pay and retirement benefits are well below those of competing jurisdictions, resulting in double-digit attrition and a high vacancy rate. The Chief Risk Officer is working closely with Amtrak's authorizing committees to find relief for this most serious problem.

Section 10 – Fire and Life Safety Improvements

We strongly support the Committee's recommendation to provide additional grant authority to address security issues involving Amtrak's Northeast Corridor tunnels. The New York City, Baltimore, and Washington DC, underground and underwater tunnels present special safety and security issues for Amtrak.

In New York City, over 1,100 trains daily use the 81,000 feet of tunnels into out of the City, with Amtrak and New Jersey Transit using the North River Tunnels beneath the Hudson River, and Amtrak and Long Island Rail Road using the East River Tunnels. The scope of Amtrak's current Life Safety Program, valued at \$470 million for Phase One, with a completion date of 2009, encompasses the construction of three major ventilation structures in Weehawken, New Jersey, Queens, New York, and Manhattan. Also included in this project is the installation of a fire standpipe system throughout the New York Penn Station complex. The Weehawken Ventilation plant was placed into service in January 2005, and the dry standpipe was placed into service in January 2006. Through December 2006, \$279.6 million has been spent on this project, funded through Federal Railroad Administration grants, the Long Island Rail Road, and Amtrak.

Amtrak's Northeast Corridor rail services and Maryland Transit Administration's MARC services pass into the heart of Baltimore through a series of tunnels, which were constructed in 1872. The Baltimore & Potomac tunnels house vital electric power lines and are critical to Amtrak's mainline operations.

With regard to the First Street Tunnel here in Washington, DC, Amtrak is working closely with DHS and is participating in the National Capital Region's Rail Corridor Pilot Project program. This project, which has proceeded much more slowly than I would have hoped, is one which I would like to brief to the Committee at a later time.

Section 11 – Security Training Program

There is no substitute for having a well trained work force who can serve as the ‘eyes and ears’ and who act as the first line of defense in noticing suspicious activities and things that are ‘out of place’ on our railroad. Likewise, we need an alert and vigilant public, who know what to do and how to act before and during emergencies, and how to report to matters that warrant the carrier’s attention.

Amtrak has followed the Federal Transit Administration’s and the American Public Transit Association’s lead in developing employee awareness training. Using security awareness training developed by Rutgers University National Transit Institute (NTI) for mass transit employees in 2003, the NTI’s transit training modules were modified slightly and customized to address Amtrak’s facilities and rail environment. An introductory and mandatory block of four hours of security training, including some class, Web-based, and CD-based training, was delivered to all Amtrak employees (17,000+) in FY 2006. This training was intended to be equivalent to “Security 101” for railroad workers. An additional four-hour, instructor-led block training for up to 14,000 employees is being delivered in FY 2007, with the first classes started in January 2007. My Office reviewed this training, and we believe that it provides a good foundation of security awareness from which additional, more specialized training can be targeted for select employees. One of the challenges for security training is to keep it topical, customize the training for the scope and responsibilities of the employee’s position, and reinforcing the training through meaningful exercises.

Amtrak has also begun a limited version of the popular “see something, say something” program that is used by a number of transit properties. Amtrak has implemented a station and on-board announcements program, alerting the public to have control of their personal baggage and carry-on articles, and to report suspicious behavior during high threat levels declared at the national level. This program is being expanded to be a part of Amtrak’s normal business practice.

With regard to Section 11 (c) (3), requiring inclusion of “appropriate responses to defend oneself, including using non-lethal force,” as a part of employee security training, we believe this requirement may run counter to prevailing best practice. Amtrak, and most other carriers, recommend that employees, unless trained as police or full-time security staff, avoid physical confrontation, but instead be aware of their surroundings and contact qualified carrier and/or law enforcement personnel at the earliest opportunity.

Section 12 - Security Exercises

Most carriers, including Amtrak, have considerable experience with emergency response drills and exercises, with greater frequency of such activities since 9/11. There is a growing body of ‘lessons learned’ from the exercises, drills, and table-tops, and resulting after-action reports that assist in safety and security investment decisions, and facilitate changes in operational protocols.

From an OIG perspective, I have seen very well conducted and useful security exercises, and I have also seen poorly executed, artificially constrained, and little value added exercises. More importantly, I have seen very meaningful recommendations from exercises and assessments that have not been timely acted upon. I very much support the inclusion of the Remedial Action Management Program, using FEMA's experiences, in monitoring implementation of lessons learned and best practices. My Office will also be monitoring the adoption and application of observations and recommendations generated by security exercises.

Section 13 – Security Research and Development

The Committee has recognized the need for more collaborative research and development and technology convergence to develop affordable and effective rail security solutions; we very much agree. There are considerable challenges for passenger carriers to find and apply the most appropriate security technologies to fit their environments. Much of what has been accomplished to date by passenger rail is accomplished by information exchanges through existing industry associations and through professional relationships and private sector marketing. There has been some assistance provided by DHS in the form of providing screening equipment for pilot projects and special security events, but much more can be done in this area.

It is appropriate to recognize important work being done in security technology advancement by the rail industry. The AAR maintains a Transportation Technology Center (TTCI) in Pueblo, Colorado, which is used for both testing and training purposes; Amtrak routinely uses TTCI services. We support the Committee's adoption of the amendment to make TTCI a member of the National Domestic Preparedness Consortium (NDPC).

Amtrak has also established relationships with the Lawrence Livermore National Laboratory, working with the OIG to conduct CBRNE assessments at ten major urban stations; with Argonne Laboratories, to install chemical sensor technology; and with Minnesota State University to install a SMART CCTV system at four stations. Amtrak, and the Amtrak OIG, have also benefited from the work and ongoing support of the Technical Support Working Group in making critical vulnerability assessments of key passenger rail assets.

Section 14 – Whistleblower Protection

We very much understand the desire of the Committee to protect and safeguard those who would come forward to report violations of security-related statutes and regulations. Whistleblower statutes are intended to encourage vigilance using our greatest resource, our employees, by protecting them from retaliation and discrimination for such reporting.

As an Office of Inspector General, my Office responds to whistleblower allegations under the Railroad Safety Act; we also investigate allegations of harassment and intimidation under 49 CFR 225, regarding Railroad Accident Reporting. Additionally,

under the Inspector General Act, we have responsibilities that are analogous to whistleblower protection applicable to Amtrak employees.

From our reading of the draft bill, and from an Amtrak OIG perspective, there does not appear to be any precedential equivalent to the allowable damages and criminal penalties for violations of this provision. The Committee may want to extend further inquiry into this area as well as be briefed on the extant DOT whistleblower statutes and regulations, including 49 CFR 42121, which involves whistleblower protection of employees providing air safety information, and applicable DOT reports on whistleblower cases.

Other Recommendations:

- Authorize railroad police officers to exercise law enforcement powers on the property of another railroad. This would allow railroads to better leverage their police and security assets. The proposal was included in earlier legislation from the 109th Congress, sponsored by the House Transportation & Infrastructure Committee.
- With regard to the DHS Committee's proposed directives on background checks, we agree that September 11 altered the vigilance which we all must employ in the transportation industry with respect to third parties as well as employees and contractors. Thus the issue of background checks of certain employees is a somewhat complex issue, yet a critical piece of the cloak of security. The difficulty lies in the determination of **which** employees should be subject to background checks and **what should be considered disqualifying factors**. In managing a personnel security program, the following factors are vital: assigning risk designations for all employee positions; determining who completes the background checks (carrier/DHS/DOT); determining which background check system is most appropriate (when should NCIC be allowed); ensuring that the background checks are timely and thorough; establishing controls to protect against terminations that are based upon inaccurate or stale information, including the right to submit promptly rebutting information (Amtrak fully complies with the Fair Credit Reporting Act, which already provides a level of protection for individuals to challenge inaccurate information contained in a background check); adopting document control policies for personnel security files; and, ensuring that those performing background checks are properly trained and audited.

For instance, some of the criteria for assessing risk would be unescorted access to secure areas, potential for dangerous activities or compromising one's duties and responsibilities, potential for greatest harm to passengers or human life, and the degree to which oversight can be exercised with respect to such personnel. Amtrak engineers who operate the trains, mechanical personnel who inspect, analyze and repair safety critical parts such as brakes, personnel who work in rail traffic control facilities, and baggage handlers would perhaps all be designated as requiring higher security clearances and the more extensive background checks. Under any contemplated program, carriers would be required to submit its

comprehensive plan to be approved by either the Department of Homeland Security or the Department of Transportation.

Background: Amtrak Office of Inspector General

The Amtrak OIG is a fully statutory designated federal entity OIG established by the Inspector General Act of 1978. The OIG was established in 1989, has about 100 employees, and operates from seven field offices throughout the United States.

The OIG is responsible for oversight of all of Amtrak's programs and operations. For the past several years, the OIG has been heavily involved in evaluating and overseeing security operations within Amtrak. Immediately following the bombings in Chechnya, in December 2003, Amtrak's Board Chairman asked me to conduct an in-depth review of Amtrak's police and security operations. My Office worked with the Federal Railroad Administration (FRA) to obtain the services of the RAND Corporation to conduct this review. We were barely one month into our work when terrorists struck the Spanish rail system on March 11, 2004. In May 2004, we provided Amtrak with our observations and recommendations to improve security preparedness and to formalize and upgrade its police and security planning and operations. Amtrak has made some progress toward addressing some of the security shortfalls that were identified, but significant challenges remain.

We have been very forward leaning in our security assessments. During the past two years, my Office has conducted several 'red team' operations covering critical Amtrak assets; we have performed detailed CBRNE site assessments using the Lawrence Livermore National Laboratory Homeland Defense Operational Planning System (HOPS) group; we have been greatly assisted by the California National Guard and the Technical Support Working Group (TSWG) in contracting for highly detailed, virtual digital mapping of key stations (for use by asset stakeholders and first responders); and we have been similarly assisted by the National Guard Bureau and their Full Spectrum Infrastructure Vulnerability Assessment (FSIVA) teams. We have also independently contracted and sponsored counter-surveillance training for select Amtrak police, OIG staff, and other railroad security staff. In short, we on our own have sought help from almost any quarter, be it federal, state, and private entities, to find those "right things" to do.

My Office and Amtrak also reached out to the international rail and security communities, sponsoring visits in February 2005 from the Guardia Civil, Spain's premier counter-terrorism unit and Spain's national railways operator, Renfe. In 2006, Amtrak officials were briefed by both British and Indian Railway officials regarding attacks in their countries, and as recently as last month, Amtrak senior managers were provided special briefings by the British Transport Police.

Another important development affecting Amtrak's Northeast Corridor was the creation of Northeast Rail Police Coalition. Last year, NYPD Commissioner Ray Kelly called for a summit of police chiefs and other high ranking law enforcement officials from New

York City to Washington DC. Commissioner Kelly proposed a coordinated approach by city, state, and local law enforcement to improve passenger rail security. The group, comprised of NYPD, Amtrak Police, Baltimore City Police, Delaware State Police and Delaware Homeland Security, Metropolitan DC and Transit Police, New Jersey Transit Police, Philadelphia Police, and other New Jersey and Pennsylvania State law enforcement, agreed to provide periodic support to Amtrak by boarding trains with officers and bomb dogs at key stations, conducting surveillance of the track and other facilities, and conducting other protective measures. This coalition began their work starting in July 2006, and we are pleased to report has become an integral part of Amtrak's security operations.

The Amtrak OIG has also joined the President's Council for Integrity and Efficiency (PCIE) Homeland Security Roundtable, chaired by DHS Inspector General Richard Skinner, where we will be sharing red teaming and other security assessment approaches with the OIG community. And we will begin using the PCIE's *Guide to Evaluating Agency Emergency Preparedness (November 2006)* in our FY 2007 and FY 2008 evaluations of emergency planning at Amtrak.

We have had extensive involvement in the rail security and the anti-terrorism field.

RESPONSE TO CONGRESSIONAL QUESTIONS

23 March 2007

Questions by Ranking Member – Representative John Duncan

Question #1:

Mr. Weiderhold, RAND Corporation conducted a review of Amtrak's security program over a year ago. Could you tell us the results of this review and what actions Amtrak has taken?

Answer #1:

Due to the sensitivity of this material we would be pleased to provide an answer to this query under separate cover. The response to this question contains three elements: the original RAND report from June 2004; an interim scorecard that provides a static assessment of progress in terms of the assessment categories used by RAND; and an overview of the new Chief Risk Officer (CRO) organization to which security and emergency preparedness responsibilities have now been assigned.

Question #2:

Mr. Weiderhold, does Amtrak's police force currently have the capability to communicate directly with other fire and law enforcement agencies around the country? In particular, I'm interested in whether you can connect with agencies in major metropolitan areas, like the New York City Police and Fire Departments, the PATH Police, etc.

Answer #2:

The Amtrak Police Department (APD) is currently only able to communicate directly via radio (through the National Communications Center (NCC) in Philadelphia) with the Philadelphia Police Department. This connectivity is accomplished through the use of a purchased portable radio containing the 800 MHz frequency of that department, and a mutual aid agreement. Landline communication between APD and any first responder agency throughout the country is available, albeit through the NCC as a switching center for messages – rather than via direct radio links.

Most law enforcement and emergency services agencies operate on a 500 MHz to 800 MHz public safety band range. The Amtrak Police Department's ability to migrate to the 500 – to – 800 MHz band range is proscribed by the FCC due to its designation as a railroad police agency – and prohibitive costs associated with upgrading the existing Amtrak radio communications infrastructure.

A project is currently underway to connect the Amtrak Police NCC to the Maryland Emergency Management Agency's statewide radio network allowing for direct communications with Maryland agencies during emergencies. Two additional projects of the same type are under review for potential connectivity to the New Jersey Transit Police Department radio system and the New York Metropolitan Transit Police radio system; however, no direct link exists to the New York Police Department or PATH.

Question #3:

Mr. Weiderhold, in the event of a chemical or biological incident on Amtrak, do you have an appropriate decontamination and testing procedure in place? For example, if you found a suspicious substance in Penn Station, how would the incident be handled?

Answer #3:

With the exception of NY Penn Station, Amtrak has no in-house decontamination or testing systems for chemical or biological incidents. Amtrak is dependent on appropriate law enforcement agencies to provide effective responses at such incidents elsewhere in the intercity rail network.

The current NY City BioWatch system is comprised of a network of monitoring sites throughout the metropolitan area. The locations for these units were selected to maximize coverage of New York City, taking into account variations in daytime and nighttime populations. Penn Station has been selected as one of the monitoring locations, and currently has eight active BioWatch air sampling units in place.

If a suspicious substance is found in Penn Station, the incident is managed in the following manner:

- (a) Depending on the nature of the report, and whether a suspicious package or bag was involved, evacuation and containment of the effected area is a standard procedure;
- (b) If a suspicious package or bag is involved, a canine unit will be assigned to inspect the item. If the dog "hits" on the item, the NYPD bomb squad will be contacted, after which, they will assume incident command according to standard incident command system protocols.

Additionally, the BioWatch air sampling units deployed in NY Penn Station are not time sensitive, in that their filters are examined once a day by personnel from the NY State Department of Health and Mental Hygiene (DOHMH) Public Health Laboratory (PHL) and the New York City Department of Health and Mental Hygiene (NYC DOHMH). Results of sample analysis are communicated to NYPD and APD agencies as and when necessary. As such, these sensors have no utility for a time-urgent suspicious substance event at the station – and would not play a role in incident management.

Question #4:

Mr. Weiderhold, can the Northeast Corridor keep operating if there is a widespread commercial power failure affecting the Northeast? If not, what would it take to provide backup traction power?

Answer #4:

A complete commercial loss of power in the Northeast would shut down the electric traction operations. Depending upon the level of service required during the wide spread outage, we would have to provide back up diesel or natural gas generators at each of our supply stations, or key ones to move a limited number of trains out of the tunnels. Keep in mind that the largest backup turbine generator is around 13 to 15 Mega watts; we would need 25 to 30 of these units for back up generators, which would cost approximately \$400 million to install at the various supply locations. The maintenance, periodic exercising to ensure they start when called upon and fuel supply costs would add several million to the annual maintenance. We would have to rely on diesel locomotives to move or rescue trains on the Northeast Corridor at the current time.

Depending upon how wide spread the outage is, the traction power system takes power for the 25 Hz system (i.e., Washington to New York, and Philadelphia to Harrisburg) from five different utilities at six locations that vary from 230kV, 138 kV, 69 kV, 13.8 kV and hydro-electric sources in the states of Maryland, Pennsylvania, New Jersey and New York. The section from New York to Boston is 60 Hz and takes power from 138 kV and 115 kV sources from four different utilities on Amtrak in the states of New York, Connecticut, Rhode Island, and Massachusetts and Metro North Commuter Railroad (New Rochelle to New Haven) obtains power from two different utility sources from 27 kV to 115 kV in the states of New York and Connecticut. Consequently it would have to be an expansive outage over several states and utilities to shut down the entire Northeast Corridor.

As information the area covered by the Northeast Corridor is under the control of three different Independent Service Operators (ISO's) who monitor the power flows across the interconnection ties. If you recall in the August 2003 black out in the Michigan, Ohio, western Pennsylvania, Canada, New York and parts Connecticut, it was the action of the two of the ISO operators that kept the black out from spreading south of the Hudson River towards Philadelphia and from New Haven, CT to Boston. This is why Amtrak was able to run trains from New York to Washington after we were able to reroute signal power from New Jersey into New York to provide signals for our trains. If you recall the subway systems in New York and Metro North Commuter Railroad were shut down until the commercial power grid was restored.

Question 5:

Mr. Weiderhold, Amtrak owns the rail tunnel which runs under the Cannon Building. Would this site be appropriate for a remote-controlled rollup door on the

tunnel? I understood that some freight railroads have such doors and keep their tunnels shut except when trains are passing?

Answer 5:

Currently there are plans to install a robust intrusion detection system for this tunnel; however, there are no plans for remote-controlled doors due to the high volume of traffic through the tunnel.

Questions by Representative Henry E. Brown, Jr.

Question #1:

Transit providers, whether in a major city like here in Washington, or in smaller communities like those in my district, often serve a large proportion of tourists. Many of these visitors are not familiar with the transit system they are using, and for many the trip on that transit bus or subway might be their first time on public transit. Has anyone looked at this issue?

Answer #1:

Amtrak has undertaken heightened security measures for the benefit of our customers. Amtrak shares passenger security and identification policies, baggage policy, personal safety information, and border crossing information, as well as many other items with the public through many forms of media. These include, but are not limited to:

- Internet - Amtrak homepage at www.amtrak.com
- Print - Ticket jackets and stuffer cards, timetables, seat-back cards, bulkhead and station posters
- Public Address Announcements – Regular station announcements are made where PA systems are available; onboard train announcements.

Question #2:

Transit-based intelligent transportation systems are being deployed on more systems across country. Is there a focus to find ways where ITS can both improve operations and security? What are some examples of dual use for ITS?

Answer #2:

No ITS-based security improvements are currently planned. This matter is being researched by Amtrak.